PRESIDENT TRUMAN'S APPROACH TO THE NATIONAL EMERGENCY STRIKE PROBLEM

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PRESIDENT TRUMAN'S APPROACH TO THE
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PREFACE

Strikes by labor unions have long been recognized as legitimate methods of bringing pressure to bear upon management to improve conditions of employment. In the United States it has generally been accepted by labor, management, and the public that compulsory arbitration does not always provide the most advantageous means of solving industrial disputes. However, labor disputes that produce national emergencies are quite naturally problems that must be considered by the federal government. An industrial dispute that deprives American troops of badly needed supplies in time of war amounts to giving aid and comfort to the enemy. Likewise, in a highly complex society such as ours, a few strikes, even in peacetime, deny goods and services needed by large numbers of citizens for their survival. In a democratic society demands are often made that strikes of this nature be outlawed. Hence government faces a perplexing dilemma in that it must protect the public interest from the adverse consequences of national emergency strikes, and simultaneously maintain conditions that will permit a full utilization of free collective bargaining without direct government intervention.

In this study I have endeavored to analyze the means by which Congress and President Truman attempted to protect what they interpreted to mean the public interest during national emergency labor disputes. The effort on the part of two branches of our government to accomplish the same objective was complicated by what might be regarded as a struggle between Congress and President Truman as to what method should be employed to combat national emergency strikes, as well as a clash over which branch of

the government should have final responsibility for action when this problem arose. In this study I have compared the Taft-Hartley approach with that of President Truman, while pointing out the strength and weakness of each.

I would like to acknowledge the assistance and encouragement offered by Dr. G. B. Hawkins and Dr. C. A. L. Rich of the Political Science Department. I am indebted to Dr. Guy R. Donnell whose patience and critical advice have contributed greatly to the preparation of this study.

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CHAPTER I

INTRODUCTION--THE HISTORICAL DEVELOPMENT OF GOVERNMENT ACTION TOWARD THE NATIONAL EMERGENCY LABOR DISPUTE

Strikes and labor unrest are the objects of general concern because the effects of a strike in an interdependent economy such as that of the United States are felt not only by the employers and employees, but by the general public as well. Government has been particularly concerned with the strike that endangers the health and safety of the national community. Many questions have arisen as to the course of action that the federal government should take toward such labor disputes. Upon whose shoulders was the responsibility of protecting the public interest when labor disputes caused a breakdown of production during periods of national emergency? What type of strike was a "national emergency" strike? Were strikes in key industries of such vital importance that they constituted inherent national emergencies? Such questions as these stimulated investigation by the national government into labor-management relations, but not until 1947 did Congress attempt to solve the problem permanently.

A survey of labor policy before the Truman administration reveals several important trends in action taken regarding national emergency labor disputes. First, the government did not create any permanent machinery to deal with disputes of this type. Instead each administration met its particular labor crisis with action necessary to settle that individual emergency. Second, it was uncommon for the federal authorities to interfere in any type of labor dispute unless the country was involved in a war. Third, a practice that evolved slowly was that

government seizure provided the most effective weapon of halting national emergency strikes. Fourth, in order to protect the public from labor disputes, the executive department often took actions of a questionable nature. Fifth, special boards with emergency powers were established to combat the effects of strikes during war periods. Finally, it is of importance to note that not until 1947 did Congress give legal expression to the view that strikes in some industries were such a threat to the public welfare, even in peace, that they inherently constituted a national emergency strike.

The development of federal intervention in the economy during periods of national emergency had its origin during the Civil War. The Railroad and Telegraph Act of January 31, 1862, empowered the President to "take possession" of telegraph lines and railroads "when in his judgment the public safety may require it."[1] This law gave legal birth to the technique of executive seizure, a device that was later to be used effectively in halting labor disputes that threatened the public welfare. It is interesting to note that President Lincoln used seizure long before he received Congressional authorization. On April 27, 1861, by presidential proclamation, the national government seized rail and telegraph lines between Washington, D. C., and Annapolis, Maryland. Lincoln cited no source of legal authority for his action, but depended upon his general powers as commander-in-chief because Southern sympathizers were constantly interrupting communications between the two cities. In two other cases Lincoln utilized seizure powers under the Railroad and Telegraph Act; the telegraph lines were seized in February of 1862 as were the railroads

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[1] U. S. Statutes At Large, Vol. XII, p. 334 (1862).

in May of the same year.[2] President Lincoln established the pattern of action which future presidents were to use when faced with labor disputes that endangered the public welfare.

The first active intervention of a president into industrial struggles between labor and management came during the railroad strike of 1877. Violence and property destruction caused nine governors to request federal assistance from President Hayes, who immediately sent troops into the strike areas with orders to keep the trains running. This indicated that President Hayes assumed responsibility for action when a strike of national proportions threatened to disrupt the economy.

Another early example of executive intervention in labor management relations may be noted in President Cleveland's action in the Pullman Strike of 1894. In this case the federal government was successful in breaking a sympathy strike of the American Railroad Union by using federal troops to restore order and to force the workers to keep the trains running. The government intervened on grounds that the strike interfered with the regular movement of the United States mail. Attorney General Olney gave legal sanction to this move by securing a federal injunction prohibiting the strike, an action the union leaders disregarded. The court found Eugene V. Debs, president of the American Railroad Union, guilty of contempt. The Pullman strike is further illustration of the vast power often assumed by presidents during strikes of national significance.

In 1902, when the nation faced a coal shortage because of a prolonged strike by the United Mine Workers, President Roosevelt assumed the

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[2]An excellent condensation of the three seizures of private property during the Lincoln administration is to be found in Justice Felix Frankfurter's concurring opinion in Youngstown Sheet and Tube Co. et al v. Sawyer, 343 U. S., p. 620 (1951).

initiative to protect the public interest by threatening to seize the nation's coal mines, a threat which caused a speedy solution of the issues involved.

During World War I, President Wilson was confronted with serious labor difficulties that threatened to slow down vital war production. Congress passed a series of laws designed to give the chief executive seizure powers to meet the emergency of total war. The National Defense Act, the Army Appropriations Act, the Naval Emergency Act, the Emergency Shipping Act, the Food and Fuel Act, and the Joint Resolutions of July 16, 1919, gave President Wilson discretionary authority to seize and operate industry when seizure was considered necessary to protect the public welfare.[3]

President Wilson established an ad hoc board through which the government might obtain peaceful settlement of labor disputes for the duration of hostilities. The National War Labor Board was established to serve as an "industrial supreme court" for the period of the emergency.[4] Any labor dispute that interrupted industrial production was to be the concern of the board. The National War Labor Board was to guarantee fair and impartial decisions to all parties who brought disputes to it for settlement. The board was given competence to mediate and conciliate

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[3] An excellent summary of these laws in condensed form is to be found in a chart attached to Justice Felix Frankfurter's concurring opinion. Ibid., pp. 616-617.

[4] The termination report of the National War Labor Board describes the objectives of the board as follows: "The National War Labor Board served as an industrial supreme court for the period of the war. The principal object of its creation was the removal of causes of interrupted production by providing a means by which parties to controversies might continue their industrial efforts with the knowledge that their differences would be adjudicated fairly and honestly. . ." U. S. Bureau of Labor Statistics, National War Labor Board, Bulletin 287 (Washington: Government Printing Office, 1922), p. 19.

labor controversies through local committees appointed by the national board, with the right of appeal to the National War Labor Board when the local committee was unable to secure voluntary agreement. This arrangement established a means whereby the government might be assured of uninterrupted war production.

The type of organization used by the National War Labor Board served as a pattern for future use. Labor and management were each represented by five members and permitted to designate co-chairman. Frank R. Walsh acted as the chairman of the labor delegation, and William H. Taft served in a similar capacity for the management group.[5] Thus both groups were granted equal representation, a trend that has since been characteristic of such boards.

When the National War Labor Board rendered a decision and one of the disputants refused to abide by it, that party faced the immediate threat of executive pressure either in the form of seizure or unofficial action. The support given by President Wilson to the National War Labor Board quickly established its reputation and minimized any resistance to its recommendations.

Backed by numerous laws granting seizure powers to the President, and with the National War Labor Board functioning to secure peaceful settlement of all industrial disputes, Wilson used his authority forcefully to maintain uninterrupted war production. The President invoked his seizure powers when strikes in the rail and communications industries threatened to halt these important services. President Wilson enforced the recommendations of the National War Labor Board by seizing a small arms plant owned by the Smith and Wesson company. In each case

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[5] Ibid., p. 10.

uninterrupted production was maintained because the workers refused to strike against the government.

But the most interesting case involved the President's methods to halt a strike of the International Association of Machinists at Bridgeport, Connecticut. When the union refused to obey an award made by the National War Labor Board, the President threatened to draft the strikers into the army, and employ a government blacklist by not allowing them to work in any other war industry.[6] This famous "work or fight" order ended all labor difficulties in Bridgeport and full production was immediately resumed. Pressure of this type, applied without resort to seizure, is of questionable legality, but it was successful in terminating the work stoppage.

The next developments of importance concerning national emergency labor disputes came during 1941 while the United States was rearming to meet the threat of German and Japanese imperialism. As prices began to rise in 1940 and 1941 and with the return of full employment because of the rearmament program, labor unions demanded a larger share of the profits in the form of increased wages. Strikes crippled defense production, and the number of man-days of idleness due to strikes increased from 458,314 in December of 1940 to 1,543,803 in March of 1941.[7] War prosperity brought

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[6] President Wilson made his intent clear in a letter to the union stating: "I desire that you return to work and abide by the award. If you refuse, each of you will be barred from employment in the community in which the strike occurs for a period of one year. During that time the U. S. Employment Service will decline to obtain employment for you in any war industry elsewhere in the United States. . . and draft boards will be instructed to reject any claim of exemption on your alleged usefulness in war production." Ibid., p. 36.

[7] U. S. Bureau of Labor Statistics, Report of the Work of the National Defense Mediation Board, Bulletin No. 714 (Washington: Government Printing Office, 1942), p. 1.

serious labor disputes to such key industries as the International Harvester Company, Allis-Chalmers Manufacturing Company, Bethlehem Steel Corporation, and the Ford Motor Company.

President Roosevelt acted eight months before Pearl Harbor to meet the threat of strikes by establishing the National Defense Mediation Board to adjust disputes in industries vital to the national defense program.[8] The National Defense Mediation Board was composed of eleven members, four representing business, four representing labor, and three representing the public. Labor's delegates were to be evenly divided between the AFL and the CIO. This tripartisan form of organization was to become a permanent feature of such boards.

The board was given the power to make "reasonable" efforts to adjust labor disputes through the technique of mediation. If this failed, as a second alternative, the board could recommend voluntary arbitration, but decisions were not binding except by prior agreement of the disputants. As a third alternative, if the other two methods failed, the national board could act as a fact-finding agency to investigate the issues and alleged unfair practices of the dispute. After this preliminary investigation, the board could make recommendations to the parties of the dispute as to a fair and equitable settlement. The board had discretionary power to make their findings public.[9]

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[8]By executive order the President explained his action as follows: "Whereas it is essential in the present emergency that employers and employees engaged in the production or transportation of materials vital to national defense shall exert every possible effort to assure that all work necessary for national defense shall proceed without interruption and with all possible speed. . . there is hereby created in the office of Emergency Management, a board to be known as the National Defense and Mediation Board." U. S. National Archives, Federal Register, Executive Order 8716, Vol. VI (Washington: Government Printing Office, 1941), p. 1532.

[9]Ibid.

The National Defense Mediation Board adjusted peacefully ninety-six of the one hundred eighteen disputes submitted to it for consideration. Peaceful settlements were arranged in important controversies such as those involving the 7,500 employees of the Allis Chalmers Manufacturing Company, the 160,000 workers in the General Motors plants, the 400,000 bituminous coal miners, and the 225,000 employees of major trucking firms located in twelve midwestern states.[10]

In four disputes where the National Defense Mediation Board was unable to secure settlement, the President took independent action. In three of the disputes the President employed the technique of seizure to prevent harmful work stoppages.

When the National Defense Mediation Board announced that it was unable to make any progress in a dispute between the North American Aviation Company and the United Automobile Workers (CIO) regarding a new wage scale, the union members walked out in violation of a previous agreement negotiated with the board. The local union struck in defiance of its national leaders in the CIO who supported the agreement that had been concluded with the National Defense Mediation Board to the effect that there would be no strikes while a new wage scale was being determined. As a result when the leaders of the CIO became aware of the fact that the local had agreed to a no-strike pledge to obtain a breathing spell to make preparations for a walkout they labeled it a "wildcat" strike. On June 9, 1941, President Roosevelt issued an executive order directing the Secretary of War to take charge of the plant. The government was forced to use troops with fixed bayonets to disperse pickets who had massed at

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[10] U. S. Bureau of Labor Statistics, Bulletin 714, op. cit., p. 2.

the entrances of the plant. The presence of troops induced the strikers to return to work.[11]

The second case that required government action was a dispute involving the Federal Shipbuilding and Drydock Company and the Industrial Union and Marine Shipbuilding Workers of America. Approximately 16,000 shipbuilding workers walked out when the company refused to accept a board recommendation that a union shop clause be incorporated into the next contract. Because of the importance of this industry to the war effort, the President ordered the Secretary of the Navy to take possession of the company's property on the behalf of the government. The workers returned to the job rather than strike against the government.[12]

A third seizure resulted from a dispute between the Air Associates Company of Bendix, New Jersey, and the United Automobile Workers. Despite the fact that only 525 workers were affected, government action was necessary because of a five million dollar defense contract the company had with the government. The immediate cause of the strike resulted from the dismissal of certain union members after a bitter organizational election supervised by the National Labor Relations Board. The union charged that this dismissal of employees constituted a lock-out. The National Defense Mediation Board recommended that the workers be reinstated, but when the company refused, a strike resulted. Production was resumed when the Secretary of War took possession of the plant in the name of the government.[13]

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[11] Ibid., pp. 156-160.

[12] Ibid., pp. 185-192.

[13] Ibid., pp. 194-199.

A dispute between the United Mine Workers and the so-called "captive mine" owners of the bituminous coal industry also necessitated intervention by the President. A strike occurred when the companies refused to accept a union shop clause in a new contract. The union delegates then resigned from the National Defense Mediation Board when the United Mine Workers refused outright to consider any recommendations of the board. With the board helpless, President Roosevelt made a dramatic plea to the patriotism of the miners which secured a settlement through arbitration.[14]

It is interesting to note that in these four cases seizure was taken in one case after the CIO had disavowed any responsibility for the strike, and in two others after the employer had refused to accept the recommendations of the National Defense Mediation Board. Seizure enabled the government to maintain uninterrupted production during this emergency period. In the executive orders directing the various department heads to seize the property of the companies in these three cases there was no mention of any specific statutory justification. On the contrary, all orders of this type were signed by President Roosevelt as the "President of the United States and Commander-in-chief of the Army and Navy," implying thereby a dependence on his general executive powers.[15]

With the entry of the United States into World War II as a full partner ofthe allied cause, it appeared that a new policy to deal with labor-management relations should be formulated. Any strike that hampered

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[14] Ibid., pp. 117-126.

[15] The three seizure orders are to be found as follows: The Seizure of the North American Aviation plant; U. S. National Archives, Federal Register, Executive Order 8873, Vol. VI (Washington: Government Printing Office, 1941), p. 2777. The Seizure of the Federal Shipbuilders and Drydock Co.; Executive Order 8868, Ibid., p. 4351. The seizure of the Air Associates plant; Executive Order 8928, Ibid., p. 5559.

the production of war material might now be considered a national emergency. In order to find an improved labor-management relations policy for actual war conditions, President Roosevelt in December of 1941, called a conference of business and labor leaders composed of twenty-four delegates representing the National Association of Manufacturers, the United States Chamber of Commerce, the American Federation of Labor, and the Congress of Industrial Organization. These delegates agreed to a "no strike-no lockout" policy for the duration of the war. President Roosevelt then promised to create a new board to handle labor disputes. One factor that tended to minimize the success of the conference was the fact that those involved failed to agree on a common policy toward the expansion of the union shop contract principle during the emergency.[16] The union shop principle proved to be a cause of many serious strikes during the war period.

On January 12, 1942, President Roosevelt issued an executive order establishing the National War Labor Board and charged it with the duty of maintaining industrial peace. The National War Labor Board was given authority to use mediation, voluntary arbitration, or arbitration to settle those disputes which might interfere with war production.[17] Labor, management, and the public were each represented by four delegates on the board. The board served in an advisory capacity to unions, management, and the President concerning the requirements of sound labor relations for the duration of the emergency. Because of the board's advisory

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[16]Harry A. Millis and Emily C. Brown, From the Wagner Act to Taft-Hartley (Chicago: University of Chicago Press, 1950), pp. 296-297.

[17]U. S. National Archives, Federal Register, Executive Order 9017, Vol. VII (Washington: Government Printing Office, 1942), p. 237.

function, its decisions were merely recommendations and were not enforceable except by independent action of the Chief Executive. Usually the refusal of either party to accept a board recommendation resulted in the seizure of that particular industry. In reality then the government often imposed its own terms on the disputants as a basis for settlement, a practice which resulted in charges that the government was utilizing a system of compulsory arbitration.

The President was quick to enforce the recommendations of the board when the Toledo, P. and W. Railroad refused to follow its advisory opinion that a wage dispute should be arbitrated. The government seized the properties of the rail line on the recommendation of the board and retained possession until October 1, 1945.[18]

Prior to the passage of the War Labor Disputes Act in 1943, the President invoked seizure in three more disputes that appeared to be a threat to war production. These included the seizures of the General Cable Company of Bayonne, New Jersey, the S. A. Woods Machine Company of Boston, Massachusetts, and the bituminous coal mines. The President neglected to cite any statutory authority for his seizure action in all four cases, thereby implying that he justified his acts on the basis of his war powers as Commander-in-chief of the Army and the Navy.[19]

Congress passed the War Labor Disputes Act, or the Smith-Connally Act in June of 1943, immediately after John L. Lewis had led the United Mine Workers out on strike in the spring. Congressional tempers flared at the miners' belligerent refusal to recognize the validity of the "no

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[18] Ludwig Teller, "Government Seizure in Labor Disputes," Harvard Law Review, LX (September, 1947), p. 1022.

[19] Youngstown Sheet and Tube Company et al v. Sawyer, op. cit., p. 621.

strike" pledge made by organized labor in December of 1941.[20] Congress decided that legislation was necessary to prevent disruptive strikes despite powerful opposition from the administration and the re-affirmation of the "no strike" pledge made in June by the AFL and the CIO. Opposed to Congressional action were the Secretaries of Labor, War, and the Navy, the National War Labor Board, and the Chairman of the War Production Board.[21]

The Smith-Connally Act was passed over President Roosevelt's veto on June 25, 1943. Section three gave the President seizure power when labor disturbances unduly impeded or delayed the production of war material. Section six of the law made it a crime for anyone to "coerce, instigate, induce, conspire with, or encourage" a strike in a seized plant.[22] A section of the law that immediately aroused a storm of protest from organized labor was the requirement that unions give thirty days' notice before they walked out on strike and a provision for a vote by secret ballot in an election supervised by the National Labor Relations Board on whether the employees wished to strike on the issues involved in that particular dispute.[23]

Another controversial feature of the War Labor Disputes Act was section nine which amended the Federal Corrupt Practices Law of 1925 to

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[20]Representative Fred A. Hartley of New Jersey gives some insight as to the reaction of the majority of Congress towards Lewis and the United Mine Workers union. "In the spring of 1943, John L. Lewis again seized the nation's throat. At a period when the fortunes of war appeared to run against us, a single labor leader struck at the foundation of the war effort." Fred A. Hartley, Our New National Labor Policy. (New York: Funk and Wagnallis Co., 1948), p. 16.

[21]Millis and Brown, op. cit., p. 286.

[22]U. S. Statutes at Large, Vol. LVII, p. 165 (1943).

[23]Ibid., p. 167.

make it illegal for a labor union to contribute to political parties for election purposes, with a fine and possible jail sentence for violaters.[24] The sudden irrelevency of this section in a war act indicated the growing hostility of Congress to organized labor.

President Roosevelt vetoed the War Labor Disputes Act, arguing that it was wrong to punish labor as a class for the misdeeds of one labor leader, John L. Lewis. The President contended that the original "no strike" pledge by labor had been kept in good faith by all unions except the United Mine Workers. He pointed out that in 1942 the time lost due to strikes averaged only five one-hundredths of one per cent of the total man hours worked.[25] President Roosevelt further objected to section eight of the law on the grounds that the strike-vote procedure was a totally ineffective method. He specifically charged that the vote procedure would hamper peaceful settlement of disputes. He said:[26]

> It would force a labor leader who is trying to prevent a strike in accordance with his no-strike pledge, to give the notice which could cause the taking of a vote which might actually precipitate a strike.
>
> In war time we cannot sanction strikes with or without notice. . .
>
> Section 8 ignores completely labor's no strike pledge and provides in effect for strike notices and strike ballots. Far from discouraging strikes these provisions would stimulate labor unrest and give government sanction to strike agitation.
>
> The 30 days allowed before the strike vote is taken under government auspices might well become a boiling period instead of a cooling period. The thought and energies of the workers would be diverted from war production to vote getting.

President Roosevelt, however, did not limit himself to just a critical analysis of the law, but recommended to Congress an extremely interesting

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[24] Ibid., pp. 167-168.

[25] Congressional Record, 78th Cong. 1st Sess., Vol. LXXXIX, Part V (Washington: Government Printing Office, 1943), p. 6487.

[26] Ibid., p. 6488.

counter-proposal. As a solution to the problem of strikes during the emergency, he proposed that the Selective Service Act be amended so that individuals could be inducted into the army for non-combat duty up to the age of sixty-five in order to "enable us to induct into military service all persons who engage in strikes or stoppages or other interruptions of work."[27] In other words, this was a proposal for a draft labor system to force workers to go back to the job when the government felt it necessary.

The Chief Executive invoked the seizure power granted by the War Labor Disputes Act forty-three times between June 25, 1943, and VJ-day in 1945. The President ordered seizure in such key industries as coal, railroads, steel, tool shops, meat packing houses, textile mills, shipyards, trucking lines, and chemical plants. Production was maintained in most cases as the strikers returned to their jobs rather than strike against the government.[28]

The cessation of hostilities did not eliminate government seizure of industry as a technique of combating the effects of national emergency strikes. After the war the country was beset by a strike wave of gigantic proportions. In 1945 there was a total of 4,750 work stoppages while in 1946 the number increased to 4,985, the highest two-year total ever recorded by the Bureau of Labor Statistics.[29] The economic dislocation

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[27] Ibid.

[28] In the famous Montgomery Ward seizure troops were used to replace the company president, Sewell Avery, and forcibly eject him from the premises. In the seizure of the Trucking companies the government reduced the salaries of company executives. However, in most cases seizure meant little beyond "running up the flag" and allowing the old management to operate the industry with little interference. Arthur Kornhauser (ed.), Industrial Conflict. (New York: McGraw-Hill Book Co., 1954), p. 437.

[29] U. S. Bureau of Labor Statistics, Work Stoppages Caused by Labor Management Disputes in 1946, Bulletin No. 918 (Washington: Government Printing Office, 1947), p. 1.

generated by this wave of labor unrest caused President Truman and his advisors to take advantage of a technicality in the War Labor Disputes Act in order that the government might find a method of protecting the public interest. Although the War Labor Disputes Act was clearly meant to be war legislation, a provision of the law declared that iw would remain in effect until six months after the President's proclamation ending hostilities. President Truman delayed issuing such a proclamation until December 31, 1946, almost one and one-half years after the end of actual fighting. For two years after VJ-day the President had legal authority to use seizure in combating the national emergency strike in peace time.

President Truman utilized these powers eight times in disputes affecting the Illinois Central rail line, the oil refining and pipeline companies, the Capital Transit Company of Washington D. C., the Great Lakes Towing Company, the meat packing industry, the New York harbor tugboat companies, the nation's railroads, and the nation's coal mines.[30] As a device for obtaining the resumption of production, seizure did not enjoy the success that it did during actual hostilities. Only a promise of wage increases, after the government seized the meat packing industry, induced the workers to go back to their jobs.[31] Seizure of the anthracite coal mines near the close of hostilities did not get the miners back into the pits until a new contract was worked out and signed. Seizure of the tugboat companies in New York harbor in November, 1945, did not end the strike of one hundred tugboatmen, and the great harbor remained idle until a special mediator was appointed when the food supply of New York City ran low. Only through extended conferences was the mediator, William H.

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[30] Feller, op. cit., p. 1035.

[31] Ibid.

Davis, able to secure a settlement.[32] The union had successfully defied the federal government by refusing to work despite the fact that the government was officially the new owner.

This confused type of government action toward the problem of national emergency strikes necessitated a clarification of the powers that could be invoked to protect the public from strikes in key industries in peace time conditions. The past had established only a pattern of hodge-podge action by both the executive and legislative branches. Congress after World War II was fully aware of the dangers of the national emergency strike and the duty of establishing a permanent method of dealing with the problem.

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[32]Kornhauser (ed.), op. cit., p. 437.

CHAPTER II

THE TAFT-HARTLEY LAW AS A METHOD OF RESOLVING NATIONAL EMERGENCY LABOR DISPUTES

The attention of Congress was turned to the problem of formulating a new labor policy as a result of the violent outbreak of strikes that followed the end of hostilities. The patriotic unity implicit in the no-strike pledge during the emergency was doomed because of the clash of conflicting labor-management interests. With the end of the war and the cancellation of war contracts by the government, labor faced the prospect of a reduced number of working hours, less overtime, shifts to lower-paid industries, downgrading, a decrease in the number of wage earners per family, and the possibility of unemployment.[1] Accordingly organized labor demanded increased wages, so that with shorter hours there would be little sacrifice in the take-home pay. Industry, faced with the prospect of returning to an economy that was not supported by lucrative war contracts, a profitable means of "priming the pump," resisted labor's demands bitterly. Unable to settle their disputes peacefully, labor and management embroiled the nation in a strike wave that was to affect 2,925,000 workers, causing 116,000,000 man-days to be spent in idleness.[2]

John L. Lewis helped to arouse the public temper on the strike problem by halting the production of coal during the winter months of 1946 when the United Mine Workers struck for higher wages. Challenging the

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[1] Millis and Brown, op. cit., p. 305.

[2] U. S. Bureau of Labor Statistics, Bulletin 918, op. cit., p. 1.

federal government to a contest of power, the strike was called despite the fact that the coal industry had already been seized during the war. The government secured a court order directing the miners to return to their jobs, but the miners again defied the power of federal authority by refusing to comply. Judge T. Alan Goldsborough of the United States District Court for the District of Columbia, fined the United Mine Workers $3,500,000 and Lewis $10,000 for contempt of court. Only then did the miners agree to dig coal. The United States Supreme Court upheld the decision of the lower court, but reduced the fine to be paid by the union to $700,000.[3]

Other issues had developed to cause Congress to consider new labor legislation. Business lobby groups such as the National Association of Manufacturers had pressed for years claims that the American business man had suffered many tyrannical injustices under the Wagner Act. Business contended that the interpretation of the Wagner Act by the National Labor Relations Board was prejudiced in that it denied the American business man his constitutional right of free speech.[4] Organized business

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[3]The Supreme Court held that neither the Norris-La Guardia Act nor the Clayton Anti-Trust law prevented a district court in a national emergency from issuing a court order restraining a strike upon the petition of the federal authorities when the mines were already in government possession. The President had the constitutional authority to seize coal mines through his power as commander-in-chief, plus the authority to seize industry under the War Labor Disputes Act. The court approved the levy of the $10,000 fine on Newis as President of the United Mine Workers. United Mine Workers of America v. the United States, 330 U. S., p. 258 (1946).

[4]Two interesting examples of testimony given to back this charge were related when an employer was denied the right to mail greeting cards to his employees at Christmas because of the National Labor Relations Board's decision that this constituted "undue coercion" in winning favor among the workers. The board denied another employer the right to send out letters or even to post placards in its plant explaining the rights of an individual in relation to his membership in a union under the law. Thomas G. Manning and David M. Potter (ed.), Government and the American

received an unexpected ally in their campaign against the National Labor Relations Board as the AFL, in the late thirties, charged that the board acted as an energetic participant in plant elections by encouraging the industrial pattern of organization. The AFL objected because it stimulated the growth of a major rival, the CIO.

The opposition to organized labor became more intense when the voters elected the Eightieth Congress, composed of a majority of Republicans who were soon able to form a working alliance with the Southern Democrats. This coalition charged that labor was guilty of many unfair labor practices such as jurisdictional strikes, secondary boycotts, featherbedding, closed shop, and sympathy strikes. The pro-business and anti-New Deal Republicans, with their southern allies, argued that under the paternal care of the New Deal, organized labor had created a labor monopoly so powerful that it dominated and was able to manipulate at will the nation's working force. This type of argument closely resembled the charges levied against business monopoly fifty years earlier. Some Congressmen believed that unions were honeycombed with agents of international communism, while others charged that mobsters had obtained control of many unions and had incorporated them into the rackets. Another argument was that legislation was needed to equalize the collective bargaining positions of labor and management. The coalition of Republicans and Southern Democrats argued that in a struggle over wages, powerful labor unions would force business to grant increases, but that business would compensate for its loss by increasing prices. Such action would contribute to an inflationary spiral that would mean economic disaster to individuals living on fixed incomes.

Economy: 1870-Present (New York: Henry Holt and Company, 1952), pp. 373-374.

The Seventy-Ninth Congress made many attempts in 1946 to legislate on labor policy, but its efforts failed. One of the first attempts was the so-called Ellender bill which provided for the appointment of fact-finding boards by the president when labor disputes seriously affected either the national interest or interstate and foreign commerce. The board was to have the responsibility of making recommendations as to an equitable settlement, but neither party was bound to accept them as a basis for a new contract.[5] The Ellender bill was followed by the Ball-Hatch bill that provided for the appointment of boards of inquiry to investigate disputes that caused severe hardships on the public. The board of inquiry could become a compulsory arbitration tribunal at the discretion of a specially created board.[6] Another measure, sponsored by Representative Case of South Dakota, provided for the appointment of fact-finding commissions in major strikes involving public utilities with a mandatory cooling-off period until after the report of the board was made.[7] The Case bill was vetoed by President Truman, and its supporters were unable to secure enough votes to override the veto.

On the day the Eightieth Congress convened, seventeen bills concerned with labor policy found their way into the hopper of the House of Representatives. President Truman in his "State of the Union" message in 1947 called for immediate labor legislation. It is interesting to note that most of the bills offered for consideration concerning the problem of national emergency strikes, and even the final draft of the Taft-Hartley law itself, were based largely upon precedents established by the Railway

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[5]Millis and Brown, op. cit., pp. 357-358.

[6]Ibid., p. 359.

[7]Ibid., p. 361.

Labor Act. This law created a system of voluntary arbitration of labor disputes in the railroad and air lines industries. But if either party refused to arbitrate and a strike resulted, the President had authority to appoint an emergency board of inquiry to investigate and make recommendations as to a just settlement. A strike was made illegal during a thirty-day period in which the board of inquiry was to investigate and prepare its report and for an additional thirty days thereafter. Upon the expiration of the sixty-day cooling-off period, the union was free to strike as the recommendations were not binding.[8] The cooling-off period and the utilization of a fact-finding board process were to become basic principles which Congress incorporated into the Taft-Hartley law.

Because the Taft-Hartley law is a tedious and complex legal document it would be futile to examine provisions other than sections 206 through 210 that directly pertain to the problem of national emergency labor disputes.

Section 206 of the Taft-Hartley law, or the Labor Management Relations Act, defines a national emergency strike and fixes the responsibility of invoking the law on the Chief Executive. The President has discretionary power to decide when a dispute is to be considered a national emergency, thereby having final authority to say when and where the law shall be applied. This section stipulates that:[9]

> Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several states or with foreign

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[8] An excellent summary of the administration of the Railway Act is found in Pearce Davis and Gerld J. Matchett, Modern Labor Economics. (New York: The Ronald Press Company, 1954), pp. 372-373.

[9] U. S. Statutes at Large, Vol. LXI, Part 1, p. 155 (1947).

nations, or engaged in the production of goods for commerce will, if permitted to occur or continue, imperil the national health or safety. . . The law then establishes a series of six legal steps that the President may take if he believes that a strike of such a nature exists.

1. The president may appoint a board of inquiry to investigate those issues which have hampered a peaceful settlement. The board must then report to the President as to "the facts with respect to the dispute, including each party's statement of its position."[10] The board does not make any recommendations either to the president or to the disputants as to a fair solution.

2. Upon receiving this report, the president may direct the Attorney General of the United States to petition any federal district court having jurisdiction to issue an injunction restraining either a strike or a lockout. If the court declares that a threat to the national health and safety exists it may issue such an injunction along with other pertinent orders that it deems necessary and proper. This serves as a check on the power of the president to apply the law.

3. The parties then negotiate with the aid of the Federal Mediation and Conciliation Service in an attempt to resolve the dispute, but neither party is required to accept any proposals or suggestions offered by the Federal Mediation and Conciliation Service.

4. When the injunction is issued by a federal district court, the President must reconvene the board of inquiry to stand by while the parties negotiate. If no agreement is reached in sixty days, the board must report to the President a second time on the positions of both parties in the dispute including the last offer of the employer. This report is

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[10] Ibid.

made public.

5. Upon the expiration of sixty days of the injunction, the National Labor Relations Board within the next fifteen days must poll the employees on whether or not they wish to accept the employer's last offer, with the results of the balloting being certified to the Attorney General within the last five days of the eighty-day period covered by the injunction.

6. In the event the dispute remains unsettled after the discharge of the injunction, the President submits to Congress a report of what occurred, with or without his recommendations for legislative action.[11]

The lawmakers rejected seizure or compulsory arbitration as possible solutions to the national emergency strike problem by adopting the Taft-Hartley approach. Senator Taft expressed this view in the following manner:[12]

> We did not feel that we should put into the law, as a part of the collective bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it would back out of collective bargaining.

The Taft-Hartley procedures reversed the trend of complete executive control and leadership in combating the problem of strikes that threatened the public interest. Final responsibility for action was transferred to Congress. The trend of strong executive control over this type of strike established by Presidents Lincoln, Wilson, Roosevelt, and Truman was checked because the Taft-Hartley law required that if all other action failed, the President must report the steps taken to Congress, whose job

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[11] Ibid., pp. 155-156.

[12] Congressional Record, 80th Cong. 1st Sess., Vol. XCIII, Part III (Washington: Government Printing Office, 1947), p. 3835.

it was to determine if action was necessary for a specific crisis. Taft makes clear the claim of Congress to final responsibility for action when he says:[13]

> We have felt that perhaps in the case of a general strike, or in case of other serious strikes, after a termination of every possible effort to resolve the dispute, the remedy might be an emergency act by Congress for that particular purpose. I have had in mind drafting such a bill, giving power to seize plants, and other necessary facilities, to seize unions, their money, and the treasury, and requisition trucks and other equipment. . . But while such a law might be prepared, I would be unwilling to place such a law on the books until we actually face such an emergency, and Congress applies the remedy for that particular emergency only. Eighty days will provide plenty of time within which to consider the possibility of what should be done. . .

Organized opposition to the Taft-Hartley law soon developed. Labor immediately branded it a "slave labor" measure. When President Truman took the law under consideration he was advised by both his Secretary of Labor, Schwellenbach, and Clark Clifford, a Presidential Counsel and Aid, to veto it. Press Secretary Ross and Clifford did most of the research on the labor law for the President, and they assisted him in drafting his veto message.[14] The President objected to the national emergency strike procedures on six basic grounds:

1. The Chief Executive believed that the work of the board of inquiry would be rendered ineffective because it had no authority to make recommendations. As a result it would serve only as a "sounding board to dramatize the respective positions of the parties."

2. He contended that if a strike occurred before the board had sufficient time to register a report, or in the event a strike occurred before the board was appointed, it could not operate effectively since experience had proven that such boards function best before a strike begins.

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[13] Ibid., p. 3836.

[14] Millis and Brown, op. cit., p. 389.

3. The injunction process would serve only to increase and intensify the bitterness existing between the disputants. Furthermore it would directly interfere with the prospects for a peaceful settlement, and would sabotage the efforts of the Federal Mediation and Conciliation Service to resolve the dispute.

4. The President charged that the voting requirement on the employer's last offer was a totally ineffective procedure. He pointed out that experience in World War II with the War Labor Disputes Act had proven that the workers would inevitably reject the employer's last offer in the name of union solidarity. The only result would be that labor leaders would receive a vote of confidence which would reinforce the union position in collective bargaining. Thus the President reasoned, unions would receive a form of direct aid from the government.

5. President Truman criticized the law as an attempt by Congress to assume responsibility for handling national emergency strikes. He argued that if Congress had this duty that it would place "economic disputes between employers and their workers over contract terms into the political arena for disposition."

6. He further indicated that there were no provisions in the law to protect the rights of employees during the injunction period when they had no recourse to the strike method as a means of protection.[15]

The veto widened the breach between the forces on Capital Hill and the White House. The House of Representatives voted to override the veto without debate or discussion, and a more reluctant Senate soon followed suit. To organized labor the law soon became a "slave labor" law, and to

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[15]The summaries of the veto message are based on the text of his message found in: Congressional Record, 80th Cong. 1st Sess., Vol. XCIII, Part VI (Washington: Government Printing Office, 1947), p. 7487.

organized business it became a fair and equitable law that had to be defended against the attacks of labor. The debate on Taft-Hartley provisions was explosive because of its natural involvement in domestic politics. Senator Taft was an active candidate for the Republican Presidential nomination in 1948 and was supported by many business interests. President Truman was searching for an issue with which to cement the alliance of organized labor and the Democratic party. This clash of political interests distorted any realistic public evaluation of the Taft-Hartley law.

The next question that must be analyzed is how the law was administered in this atmosphere of partisan bitterness. How well did the Taft-Hartley national emergency strike machinery fare when applied by the law's number one enemy, President Truman?

CHAPTER III

THE APPLICATION OF TAFT-HARTLEY NATIONAL EMERGENCY STRIKE MEASURES BY PRESIDENT TRUMAN

The first time the Taft-Hartley national emergency strike measures were applied, involved a dispute in the government-owned Oak Ridge National Laboratory which was operated by the Carbide and Carbon Chemical Corporation under a contract with the Atomic Energy Commission. The dispute was caused by an attempt of the Carbide and Carbon Chemical Corporation to establish a uniform plan of working conditions throughout all of its laboratories. The Atomic Trades Council (AFL) protested because the acceptance of such a plan would have meant the loss of certain benefit programs that had already been obtained through collective bargaining with the Monsanto Chemical Corporation, which had previously managed the Oak Ridge laboratory.[1]

After conferences, first at Oak Ridge and later in Washington, had proved futile, Cyrus Ching, the director of the Federal Mediation and Conciliation Service, warned that the dispute had "grave national implications."[2] On the fifth of March in 1948 President Truman invoked the emergency provisions of the Taft-Hartley law by appointing a board of

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[1] U. S. Bureau of Labor Statistics, Monthly Labor Review, Vol. LXVI (Washington: Government Printing Office, April, 1948), pp. 411-412.

[2] New York Times, March 1, 1948, p. 3. It is important to note that this laboratory was a leader in the production of fissionable material necessary for atomic bombs. It was also engaged in research aimed at developing a material that would withstand the corrosive effects of radioactivity.

inquiry.[3] Ten days of investigation were necessary before a report was submitted to President Truman. The board indicated that the continued operation of the Oak Ridge plant was essential for the national health and safety because the intimate tie between atomic energy and national security "limits the freedom of the union to use the strike in its bargaining position."[4] The board reported that the issue preventing settlement was the attempt of the corporation to create uniformity in working conditions throughout all its plants even though the workers at Oak Ridge would suffer the loss of certain benefits such as a sick leave plan as a result.[5]

Acting on the basis of this information, the President instructed the Attorney General to secure an injunction, which was issued by Federal Judge George C. Taylor in Knoxville, Tennessee, on the nineteenth of March. The injunction restrained the union from striking and prohibited any change in working conditions except by mutual agreement. During the period covered by the injunction, the Federal Mediation and Conciliation Service brought the disputants together on numerous occasions in an attempt to reach a settlement. As the date of discharge of the injunction drew near the Service intensified its mediation efforts, but even the imminence of the termination of the injunction failed to produce a settlement. On May 17 the board of inquiry was reconvened and it submitted a second report to the President on the following day. The findings of the board indicated that there had been no change in the demands of either

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[3]Members of the board of inquiry were: John Lord O'Brian, ex-chairman of the War Production Board, chairman; C. Canby Balderson, Dean of the Wharton School of Finance at the University of Pennsylvania; and Stanley F. Teel, the Assistant Dean of the Harvard Graduate School of Business Administration.

[4]New York Times, March 17, 1948, p. 21.

[5]U. S. Bureau of Labor Statistics, Monthly Labor Review, April, 1948, op. cit., p. 412.

party during the cooling-off period and that the last offer of the employer amounted to a ten cent per hour wage increase.[6] During the first two days in June when the National Labor Relations Board conducted an election to ascertain whether or not the last offer would be accepted, the union members rejected the offer by an overwhelming majority.[7]

Immediately after the discharge of the injunction, the parties were again convened in a joint session by the Federal Mediation and Conciliation Service, and after remaining in continuous negotiation for fifty hours, a new contract was agreed upon, four days after all the steps in the Taft-Hartley law were exhausted with the exception of the President's report to Congress. The injunction averted a strike which might have had serious consequences, but in the opinion of the Federal Mediation and Conciliation Service the injunction did not materially contribute to obtaining a final settlement.[8]

The President in a report to Congress recommended that a commission be established to study the need for special legislation which would prevent labor stoppages in atomic energy plants. He felt that such a commission should be appointed through consultation with the Atomic Energy Commission and the Joint Congressional Committee on Atomic Energy.[9]

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[6] New York Times, May 14, 1948, p. 20.

[7] The final result of the vote was 771 opposed to accepting the offer while 26 favored acceptance. Bureau of National Affairs, The Taft-Hartley Act-After One Year (Washington: The Bureau of National Affairs, Inc., 1948), p. 182.

[8] Federal Mediation and Conciliation Service, First Annual Report of the Director of the Federal Mediation and Conciliation Service for the Fiscal Year Ended June 30, 1948 (Washington: Government Printing Office, 1949), p. 42.

[9] Congressional Record, 80th Cong. 2nd Sess., Vol. XCIV, Part VII (Washington: Government Printing Office, 1948), p. 8945.

A second dispute involving the partial application of Taft-Hartley procedures concerned a wage dispute between the United Packinghouse Workers (CIO) and the "Big Five" meatpacking companies, Swift, Armour, Wilson, Cudahay, and Morrell. The union demanded twenty-nine cents per hour increase; the employers offered nine cents, an amount previously accepted by the Amalgamated Meat Cutters and Butchers Workmen of North America (AFL).

The United Packinghouse Workers struck on March 16, 1948, in a walkout that affected plants in twenty states and involved 81,000 workers. On the day before the date set for the strike, President Truman intervened by requesting a continuation of work while the wage issue was arbitrated, a proposal which was spurned by the union. On the same day that he made the suggestion of using arbitration to settle the dispute, President Truman appointed a board of inquiry pursuant to the provisions of the Taft-Hartley law.[10] After twenty-four days of investigation the board reported that conflicting wage criteria used by both parties was a contributing cause to the dispute.[11] The President, after having created the board of inquiry, did not undertake to invoke the injunctive procedures of the law because the report of the board did not indicate that a threat to the national health and safety existed. It should be noted too that the scarcity of meat products anticipated when the strike began did not materialize.[12] By refusing to interfere, President Truman allowed one of

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[10]Members of the board of inquiry were: Nathan P. Feinsinger, Professor of Law at the University of Wisconsin, chairman; Pearce Davis of the Department of Business and Economics at the Illinois Institute of Technology; and Walter V. Schafer, a Professor of Law at Northwestern University.

[11]New York Times, April 10, 1948, p. 11.

[12]Federal Mediation and Conciliation Service, op. cit., p. 43.

the most violent strikes in recent years to develop. Houses were dynamited, property was destroyed, National Guard units were called out in Minnesota and Iowa, strike breakers were brutally beaten, and pickets fought openly with the police in some cities. Finally the union was coerced into accepting the original offer made by the "Big Five" on the twentieth of May, as the employers' strategy of using "scab" labor forced the union to settle.

A dispute by the American Union of Telephone Workers (CIO) against the American Telephone and Telegraph Company (Long Lines Division) resulted in the appointment of a board of inquiry of May 18, 1948, because of a threatened walkout over wages, hours, and a pension plan.[13] When the Federal Mediation and Conciliation Service requested that the parties maintain a status quo relationship so that negotiations could continue, the company responded in a vague and ambiguous manner, and the union as a result refused to agree and quickly set a strike deadline.

However, when the company learned of possible government interference it joined with the union officials in requesting a postponement of formal hearings before the board of inquiry so that collective bargaining might be resumed. Before the board could begin an investigation, however, the parties signed a new contract. The mere appointment of the board of inquiry had re-established a bargaining relationship that resulted in a settlement.[14]

In June, 1948, the maritime workers who handled substantially all the shipping operations on the Atlantic, Gulf, Great Lakes, and Pacific

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[13]Members of the board of inquiry were: Sumner Slichter, noted Harvard economist, chairman: Aaron Horwitz, an industrial relations expert; and Charles A. Horsky, an attorney.

[14]Federal Mediation and Conciliation Service, op. cit., p. 46.

coasts threatened to strike upon the expiration of a contract unless their demands were met. One major issue preventing settlement concerned the retention of union managed hiring halls that supplied all the seagoing personnel and waterfront longshoremen used by the maritime industry. The employers charged that union managed hiring halls were a form of closed shop, prohibited under the Taft-Hartley law. The Federal Mediation and Conciliation Service was unable to bring the parties together and a strike seemed inevitable as the June 15 deadline drew near.

On the third of June, President Truman appointed a board of inquiry which was to meet in two panels, one in New York to deal with the dispute on the Atlantic, Gulf, and Great Lakes coasts, and one in San Francisco to investigate the Pacific coast dispute.[15] When the board reported to the President on June the eleventh some of the unions complained that this early date gave the unions insufficient time to enlighten the board fully as to the "basic problems and unique complications of labor relations in this industry."[16]

Upon receipt of the board's report, the President requested that the Attorney General petition a federal district court for an injunction. Federal district courts in New York, San Francisco, and Cleveland issued orders which were designed to maintain the status quo in the maritime industry for eighty days. The Federal Mediation and Conciliation Service was able to bring about a peaceful settlement on the Atlantic, Gulf, and Great Lakes coasts before the first of September, the date the injunction

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[15]Members of the board of inquiry were: Harry Schulman of Yale University Law School, chairman; Andrew Jackson, a New York attorney; Arthur P. Allen of the California Institute of Industrial Relations; and Jesse Fredin, a New York attorney; and George Cheney, a San Diego labor consultant.

[16]Federal Mediation and Conciliation Service, op. cit., p. 47.

expired. The settlement came before an election on the employer's last offer was necessary, an election that posed a major problem because of the scattered location of potential voters on ships all over the world.

It is interesting to note that when the International Longshoremen's and Warehousemen's Union led by Harry Bridges refused to settle on the Pacific coast, the National Labor Relations Board conducted a poll on the last offer of the employer in which none of the union members eligible to cast ballots voted since the union successfully boycotted the election.[17] When the injunction expired the union walked out on a strike that was to continue for two months before a peaceful settlement could be arranged. During this period collective bargaining was impossible because the employers refused to negotiate with officers of the union who had not signed a non-communist affidavit in accordance with the Taft-Hartley law. President Truman took no further action because the dispute was localized in the Pacific area and he did not believe that it posed a substantial threat to the national health and safety.

A new maritime dispute broke out when the International Longshoremen's Association (AFL) threatened to strike for higher wages on the Atlantic coast. President Truman appointed a board of inquiry on August the seventeenth and the board reported back after only one day of investigation.[18] A strike was forestalled when a federal district judge of the Southern District of New York issued an injunction restraining the parties from engaging in strikes or lockouts or from making any changes in wages, hours, terms, or conditions of employment except by mutual

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[17] Ibid., p. 48.

[18] Members of the board of inquiry were: Sam Wallen, a labor attorney, chairman; Joseph L. Miller, a labor consultant; and Julian Kass, an attorney.

agreement. The disputants were also directed by the court to bargain in good faith.

The disputants met with the Federal Mediation and Conciliation Service many times during the injunction period, but the efforts of the Service were of no avail. After the board reported to the President a second time, the National Labor Relations Board certified the following results in an election on the last offer made by the employers: Eligible to vote, 24,972; ballots market "yes," 1,083; ballots marked "no," 26,646.[19] Another interesting aspect of the voting in this case was the large number of ballots that were challenged during the polling. Among the longshoremen employed at New York, 82 votes were challenged; in Philadelphia, 109; in Baltimore, 130; and at all other places, 7.[20]

Immediately after the vote was taken on the so-called last offer, the employers made a more liberal offer which was accepted by the union officers. The rank and file of the union members refused to accept the contract, and a wildcat strike broke out in New York which quickly spread over the rest of the east coast. The union officers did some rapid backtracking; they repudiated their earlier acceptance of the employer's offer and endorsed the wildcat stoppages as an official strike three days after the discharge of the injunction.

The strike had important effects because goods and materials destined to be shipped abroad under the Marshall plan piled up in the seaports affected. All ships bound for the United States were directed to Halifax

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[19]U. S. Congress, House of Representatives, Investigation of the Wage Stabilization Board, Hearings before Committee on Education and Labor, U. S. House of Representatives, 82nd Congress 2nd Session, On H. Res. 532, June 6, 1952 (Washington: Government Printing Office, 1952), pp. 1219-1221.

[20]Ibid.

as shipping was completely tied up on the Atlantic coast. This strike caused a delay in making effective one of the most important aspects of current American foreign policy.

The Federal Mediation and Conciliation Service offered the following analysis of the effect of the Taft-Hartley national emergency strike procedures on the work of the Service in attempting to mediate the dispute:[21]

> This case furnishes another instance of a national emergency dispute in which (1) a strike was, in fact, forestalled by the injunction; (2) there was no substantial progress made toward a settlement during the injunction period; (3) all the procedures of the act (including the ballot on the last offer of the employers) were resorted to without success; (4) a strike occurred after the discharge of the injunction; and (5) the dispute was settled at long last after many meetings between the parties, aided by mediators, but not before great injury was caused to the public and the nation.

An early challenge to the national emergency strike powers under the Taft-Hartley law came from John L. Lewis and the United Mine Workers. The first dispute in the bituminous coal fields in 1948 concerned the activation of a welfare and retirement fund created in the 1947 contract. The fund was to be administered by a tripartate board, with Lewis as the union trustee, Ezra Van Horn as the operator's trustee, and Thomas E. Murry as the public trustee. After considerable disagreement over the plan of distributing the fund to retired miners, the public trustee resigned and the other two were unable to agree on a successor. Lewis began inflaming the passions of the miners by asserting that the operators had broken faith and were deliberately refusing to grant any pensions by holding up the appointment of a public trustee. Early in March, Lewis sent a wire to all officers and members of the United Mine Workers

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[21] Federal Mediation and Conciliation Service, op. cit., p. 53.

declaring that their contract had been "dishonored" by the operators.[22] This signal touched off a wildcat strike that included some 320,000 coal miners. Lewis disclaimed any responsibility for the strike and asserted that the walkout was taken on the initiative of the miners as individuals. Thereby Lewis attempted to create the effects of an industry wide strike without assuming the responsibility of calling one officially.

With ninety per cent of the nation's coal supply shut down and a fifteen per cent slash in steel production as proof of the existence of an emergency,[23] President Truman invoked the Taft-Hartley law by appointing a board of inquiry on the twenty-third of March.[24] The President allowed a twelve day period of investigation so the board might have time to accumulate the necessary data and to submit a report. The board, reporting ahead of the deadline, indicated that Lewis was in error when he asserted that the miners left their jobs as a result of individual initiative. The board reported as follows:[25]

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[22]Lewis wrote as follows: "The winter is now gone. This office proposes to go forward in requiring that the coal operators honor their agreement. Your ears will soon be assailed by their cries and wails of anguish. To relieve themselves, they need only to comply with the provisions of the agreement which they solemnly executed in this office on July 8, 1947.

"Please discuss this matter in your local unions so that our membership may be fully advised. You will later hear more on this subject." Text of the report of the board of inquiry, New York Times, April 4, 1948, p. 34.

[23]New York Times, March 21, 1948, Section III, p. 1.

[24]Members of the board of inquiry were: Judge Sherman Minton, ex-Senator from Indiana, Chairman; George W. Taylor of the Wharton School of Finance and Commerce at the University of Pennsylvania; and Mark Ethridge, the publisher of the Louisville Courier Journal.

[25]Text of the report of the board of inquiry, New York Times, April 4, 1948, p. 34.

We find that independent action was taken by the President of the United Mine Workers of America in the form of communications to the officers and members of the United Mine Workers of America which induced them to take concerted action to stop work in all mines of the operators signatory to the agreement of July 8, 1947. We find the stoppage was not independent action by miners acting individually and separately. Their action has precipitated a crisis in the industry and in the nation as a whole.

The Attorney General was able to secure an injunction on April 3, 1948, restraining the union from continuing with the strike which the court also found to be in existence, and ordered the union officers to instruct their members to return to their employment and resume collective bargaining. Lewis wrote an open letter to the miners refusing to comply with the orders of the court.[26]

Subsequently on the motion and complaint of the Attorney General, Lewis and the union were tried for contempt of court. It was charged that the word "dishonored" in the original letter was the signal from Lewis for the miners to begin a concerted walkout. This was not individual action, but rather a union managed and planned strike; the union and its officers had to accept full responsibility for the miners' refusal to abide by the orders of the court. Lewis and his legal advisors contended that the miners quit work as individuals on their own initiative as free men and not because of an alleged strike call by Lewis.

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[26]The letter stated: "It is well known to you that I have not in connection with the present dispute either by circular or document, or at any other time authorized, directed, suggested, requested, or recommended any stoppage of work or any continuation of any stoppage, and I do not now do so.

"Your actions in this regard in the original instance were your own, individually determined by you. . . Any action or decision which you may now care to take continues to be entirely for your own determination without any direction of any character from any of your international offices.

"I, therefore, now repeat that you are not now under and never have been under any orders, directions, or suggestions expressed or implied from one or any other union officers to cease work in protest to the present dishonoring of the 1947 contract." Ibid., p. 33.

Hence they reasoned that since Lewis or the union had not ordered the walkout, they could not be compelled to halt the strike by an order of the court. Lewis and his legal advisors also argued that any act by the government that coerced free men to return to work against their will was a form of involuntary servitude and unconstitutional under the thirteenth amendment.

The United States District Court of the District of Columbia, with Judge T. Allan Goldsborough presiding, found the United Mine Workers of America and its president guilty of civil and criminal contempt. Lewis was fined $20,000 and the union $1,400,000 for criminal contempt. The Goldsborough decision was based upon the following legal principles:[27]

1. The court declared that for the purposes of the national emergency strike provisions in the Taft-Hartley law a strike included any concerted work stoppage that began with a union's statement that its contract had been violated, even if there were no overt strike call. Judge Goldsborough ruled that "if a nod or a wink or a code was used, there was just as much a strike called as if the word strike had been used."

2. The court ruled that such a stoppage was not an exercise of the right of individual employees to quit work as protected by section 502 of the Taft-Hartley law.

3. It was held that a union was responsible to the law for the mass action of its members.

4. Judge Goldsborough pointed out that an injunction commanding the cessation of a strike pursuant to the law was not "unconstitutional as a form of involuntary servitude, or as an abridgement of the right of free

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[27]The Goldsborough decision is to be found in the following: The Bureau of National Affairs, op. cit., p. 181.

speech, or as a denial of due process of law" just because the injunction was issued without a hearing.

The court decision, coupled with a partial settlement of the retirement fund issue, was enough to cause the miners to go back to work. Shortly after the injunction was issued, Joseph Martin, Speaker of the House of Representatives, intervened in the dispute as a private individual. Through his efforts, Van Horn and Lewis agreed to accept Senator Styles Bridges of New Hampshire as the public trustee on the welfare fund board. Bridges immediately proposed a compromise pension plan, and a majority of the board, Lewis and Bridges, accepted it.[28] Van Horn, the operators' trustee on the welfare fund board, appealed the case to the courts charging that the pension plan was illegal. However, the elated Lewis with a true touch of irony sent a telegram to the miners which read, "Pensions now granted. The agreement is now honored. Your voluntary cessation of work should now be terminated."[29]

The bituminous coal mines were the scene of continued trouble in June of 1948. Another dispute broke out over the terms of a collective bargaining agreement to replace the 1947 contract which expired on June the thirtieth. On April 30, during the coal dispute over the pension fund, Lewis filed a sixty-day notice to begin contract negotiations in May.

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[28]Bridges proposed a pension system that would pay to qualified members of the union $100 per month, who after May 29, 1946, had twenty years of service and had reached the age of sixty-two. U. S. Bureau of Labor Statistics, Monthly Labor Review, May, 1948, op. cit., p. 532.

[29]New York Times, May 13, 1948, p. 1. The operators charged that such high level shennanigans smacked of a political deal to snatch Lewis out of a tight spot. Lewis had been an avowed Republican since 1940. Also it was often implied that Martin had ambitions to sit in the Vice-president's chair.

Negotiations bogged down as Lewis suddenly refused to bargain if the operators permitted Joseph Moody, the President of the Southern Coal Producers Association, to participate in the conference. Only an injunction directing Lewis to bargain collectively with all operators secured a place for Moody at the conference table. By mid-June, however, the conferences had again proven futile as Lewis this time drew the pension issue back into the discussion when he demanded that Van Horn drop his suit against the Bridges pension plan.

President Truman on June 19, 1948, declared that a national emergency existed within the meaning of section 206 of the Taft-Hartley law and therefore appointed a board of inquiry.[30] On the twenty-second of June, while the board was in session, Judge Goldsborough handed down a decision on the legality of the Bridges pension plan, ruling in favor of Lewis and the United Mine Workers. This inspired Lewis to come to a quick agreement on the terms for a new contract, and the board was able to report to the President that a nation wide coal strike had been averted and that no further action was necessary.

Another major test of the strength of the law came in 1950, as a result of a third dispute in the bituminous coal fields. A prolonged stalemate had existed over contract terms in the coal fields since June 30, 1949. The miners struck in mid-September, but soon returned to work on a three-day work-week basis in direct contradiction of the traditional attitude of "no contract-no work." The three-day work-week was aimed at supplying the nation's current needs, but preventing any major stockpiling of coal. A scarcity would make a strike more effective in the future.

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[30]Members of the board of inquiry were: David L. Cole, a veteran dispute arbitrator, chairman; E. Wright Bake, of Yale University; and Waldo E. Fisher of the University of Pennsylvania.

In January of 1950, sporadic work stoppages began in Pennsylvania, and soon spread to Kentucky, Ohio, and West Virginia. On the eleventh of January, Lewis sent a telegram to all districts affected by the wildcat strikes requesting that the miners return to work.[31] When the miners refused to comply, Lewis claimed that the union was not responsible for their action.

In the meantime evidence accumulated to indicate that the nation faced emergency conditions. Dr. James Boyd, Director of the Bureau of Mines, testified before the Senate Labor and Public Welfare Committee that unless there was an immediate resumption of coal production the nation would be in danger.[32] Republicans and Southern Democrats in Congress demanded that the President invoke the Taft-Hartley law.

But rather than apply the law that he so bitterly opposed, President Truman on the last day of January suggested that both parties agree to a seventy-day truce. He proposed a resumption of production while a special fact-finding board with full powers to make recommendations as to fair settlement investigated the dispute.[33] It is also interesting to note that in the text of his proposals, the President avoided any mention of his powers under the Taft-Hartley law, and even shunned the use of the words like "emergency" or "national health and safety."[34] However, Lewis

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[31] Lewis sent the following telegram to the officers of the United Mine Workers: "Will you please transmit to all members who are idle this week my suggestion that they resume production next Monday." New York Times, January 12, 1950, p. 12.

[32] U. S. Bureau of Labor Statistics, Monthly Labor Review, Vol. LXX (Washington: Government Printing Office, February, 1950), p. 166.

[33] It is interesting to note that this same plan was used by President Truman in the Steel dispute in 1949 to bypass applying the Taft-Hartley law.

[34] Text of the Truman proposals: New York Times, February 1, 1950, p. 22.

scornfully rejected this proposal. As a result President Truman invoked the Taft-Hartley law on the sixth of February by appointing a board of inquiry.[35] After conducting extended hearings, the board reported that both sides had refused to bargain in good faith. Collective bargaining broke down because the operators and the United Mine Workers "bargained with too great an emphasis on tactical advantage and with too little confidence in their ability to reach an understanding."[36]

The Attorney General sought and secured an injunction under the provisions of the Taft-Hartley law. The court issued another injunction on the petition of the General Counsel of the National Labor Relations Board. This injunction had been sought by the operators on the grounds that the union was using the three-day work-week as a "slowdown" technique to force the operators to sign a contract which contained illegal union shop provisions. The second injunction restrained the miners from striking for a union shop.

Lewis sent a telegram on the eleventh of February to the officers and members of the United Mine Workers requesting that the injunctions be complied with.[37] The miners refused as some 300,000 rallied to the slogan, "Injunctions Don't Mine Coal." Lewis sent a second telegram on February

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[35]Members of the board of inquiry were: David L. Cole, a noted labor dispute mediator, chairman; W. Writz, ex-chairman of the Wage Stabilization Board; and John Dunlop, Associate Professor of Economics at Harvard.

[36]U. S. Bureau of Labor Statistics, Monthly Labor Review, March, 1950, op. cit., p. 301.

[37]The telegram dated February 11 said: "Our unions and your officers recognize the limitations placed upon us by two injunctions, and we are complying and intend to comply in complete good faith. We now call upon you, and each of you, to join us in complying forthwith with all appropriate action as may be necessary to insure that the instructions of the court are carried out." New York Times, February 18, 1950, p. 2.

17 instructing the union members to return to the pits.[38] Once again the miners refused to return to their jobs. This was not a revolt against the leadership of Lewis because most miners believed that they were aiding him in gaining acceptance of their demands. The miners regarded the telegrams as a disguise to protect the union treasury from possible fines.

On complaint of the Attorney General, the United Mine Workers of America was tried for civil and criminal contempt of court. Judge Keech of the Federal District Court for the District of Columbia found that the contempt charges should be dismissed. He felt that it was not proven that the union officers had deliberately disobeyed the orders of the court. Judge Keech declared that "where the union has sent out communications such as are included in this record, the apparent good faith of such communications must be controverted by clear and convincing evidence."[39] One thing in particular that influenced the Keech decision was the fact that no union funds were used to aid the strikers during the idle period, seemingly clear evidence that the strike was not official but of the wildcat variety.[40] This dispute marks the only occasion where the Taft-Hartley injunction did not succeed in obtaining the return of the strikers to the job and the resumption of production.

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[38] The telegram dated February 17 said: "It appears that our members have not fully conformed to the telegraphic instructions to return to work sent out last Saturday. Therefore, this wire is in addition to such instructions and you are hereby instructed to cease forthwith all stoppages and return to work without delay.

"All officers and agents of the union are further instructed to carry out this policy and immediately inform all our members. This is for the protection and welfare of our union and all its members." Ibid.

[39] U. S. Bureau of Labor Statistics, Monthly Labor Review, April, 1950, op. cit., p. 410.

[40] New York Times, March 3, 1950, p. 1.

President Truman, on the day after the court decision, sent a special message to Congress with a warning that the critical shortage of coal was a threat to the national health and safety. He pointed out that he had taken the steps provided for in the Taft-Hartley law and that they had failed to protect the public from the effects of the strike. He proposed that Congress give him the authority to seize and operate the coal mines as a public service until the parties reached an agreement.[41] The President's attempt to revert to seizure was anticipated by the signing of a new contract that ended the strike. With a return to normal production the matter was soon forgotten.

The only war time application of the Taft-Hartley national emergency strike machinery came when 58,000 members of the International Union of Mine, Mill and Smelter Workers struck for higher wages on August 27, 1951.[42] President Truman referred the dispute to the newly reconstituted Wage Stabilization Board for consideration. The board refused to handle the case because of the union's refusal to resume work while the board investigated the issues. As a result, President Truman appointed a board of inquiry under the provisions of the Taft-Hartley law.[43]

The board reported that a strike in the nonferrous metals industry would be a threat to the defense effort and would "expose our democracy to an incalculable risk in the event of war."[44] The Attorney General

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[41] Congressional Record, 81st Cong. 2nd Sess., Vol. XCVI No. 4 (Washington: Government Printing Office, 1950), p. 2769.

[42] This was an Independent union that was once voted out of the CIO for refusing to purge itself of Communist leadership and influence.

[43] Members of the board of inquiry were: Ralph Seward and Joseph Miller of Washington D. C., and J. Allan Dash of Philadelphia.

[44] U. S. Bureau of Labor Statistics, Monthly Labor Review, Vol. LXXIII (Washington: Government Printing Office, October, 1951), p. 471.

obtained an injunction that ordered the union officials to direct their members to return to work. The workers made no attempt to avoid obeying the court order and normal production was resumed. The union came to terms with the major nonferrous metals firms a few days before the injunction expired. The remaining holdouts settled a few days later. In this case, despite the Keech decision, the injunction accomplished the purpose of delaying a harmful strike.

President Truman was often reluctant to apply the Taft-Hartley law and often took extreme measures to avoid applying it. The outbreak of the Korean War was to provide the President with an opportunity to devise another method of handling national emergency strikes.

CHAPTER IV

ALTERNATE METHODS ATTEMPTED BY PRESIDENT TRUMAN IN SOLVING NATIONAL EMERGENCY LABOR DISPUTES DURING THE KOREAN CONFLICT

Increased governmental expenditures resulting from the Korean intervention bred inflationary tendencies in an economy already producing and consuming goods at a high level.[1] Congress reacted to the threat of inflation by conferring upon the President a broad grant of discretionary control over the economy for the duration of the emergency.[2] President Truman, by executive order, delegated the bulk of this power to an Economic Stabilization Administrator, and appointed a Director of Price Stabilization and a Wage Stabilization Board to assist in the formulation of a policy for wage and price stabilization.[3]

On January 26 the Economic Stabilization Administrator, Eric Johnston, ordered a general wage and price freeze. Organized labor bitterly protested this freeze because they felt that they were being deprived of wage increases which would result from contractual obligations providing for escalator clauses, or cost of living agreements. Labor was still dissatisfied even after the Economic Stabilization Administrator allowed a ten per cent increase in wages over the January 15, 1950, general wage level. Dissatisfaction with the wage and price stabilization policy

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[1] Ten billion dollars were appropriated by Congress in August to increase the size of the Armed Forces.

[2] U. S. Statutes at Large, Vol. LXIV, pp. 798-799, (1950).

[3] U. S. National Archives, Federal Register, Executive Order 10161, Vol. XV (Washington: Government Printing Office, 1951), p. 610.

caused the labor representatives on the Wage Stabilization Board to resign in protest. They were soon followed by all other representatives of organized labor participating in the defense mobilization program, as organized labor boycotted the government's efforts to establish machinery to combat the harmful effects of inflation.

Labor leaders from the CIO, the AFL, the International Association of Machinists, and the Railway Labor Executive Association conferred in Washington D. C.; in March a newly organized United Labor Policy Committee issued a "Declaration of Principles." Among these resolutions were demands for equal representation in planning and administering the mobilization program and for a more flexible wage stabilization policy. The United Labor Policy Committee further indicated that labor would participage in the mobilization effort only if the Wage Stabilization Board was reconstituted to allow it to intercede in labor disputes. Meeting this condition would insure labor's full co-operation in the defense effort.[4]

President Truman appointed a National Advisory Board on Mobilization Policy to investigate and make recommendations as to how to insure the co-operation of all groups with the rearmament program.[5] This group voted twelve to four, with the industry delegates dissenting, for a reconstituted Wage Stabilization Board with disputes functions. In April, the President by executive order, put the recommendations of the National Advisory Board on Mobilization Policy into effect. He first enlarged the Wage Stabilization Board so that it included eighteen members to be appointed by the President with six delegates each to represent labor,

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[4]U. S. Bureau of Labor Statistics, Monthly Labor Review, April, 1951, op. cit., p. iii.

[5]The National Advisory Board on Mobilization Policy was composed of four representatives each from labor, agriculture, management, and the public.

industry, and the public. The board could intercede in labor disputes not resolved by collective bargaining, mediation, or conciliation if the dispute threatened to halt production necessary for defense, and it was voluntarily submitted to the board for consideration by the disputants. In this case, however, the recommendations of the board were not binding unless the parties involved had previously agreed to regard them as such.[6] The President had authority to submit any dispute to the board for investigation if in his opinion the dispute "substantially threatened the progress of national defense."[7] This broad definition could well be interpreted to include the national emergency dispute. The board was to investigate the issues of the dispute, make recommendations as to a fair and equitable settlement, and report to the President. However, enforcement of the board's recommendations was not mentioned in the executive order establishing the reconstituted board, as it was a separate problem that the President had to solve through independent action. Thus, in effect, Harry Truman, by executive order, had created a second route whereby he could avoid the application of Taft-Hartley national emergency strike provisions at his personal discretion.

President Truman and his advisors advanced many arguments in support of this alternate route in settling labor disputes during the emergency. It was argued that full mobilization created new industrial relations problems which would result in disastrous strikes if the government made

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[6] U. S. National Archives, Federal Register, Executive Order 10233, Vol. XVI (Washington: Government Printing Office, 1951), p. 3503.

[7] Ibid.

no effort to control labor relations.[8] It was contended that the board offered a fair method because it was based upon the democratic principle of voluntary action and not compulsion. The board was limited to making recommendations while enforcement was an independent function of the Chief Executive.[9] It was further pointed out that Taft-Hartley procedures were applicable only if a strike threatened an entire industry, while the President could refer a dispute to the Wage Stabilization Board when a strike "substantially threatened the progress of national defense." This would allow the President to obtain settlements for disputes that occurred in individual plants, such as a jet-engine factory that was small yet vital in terms of defense.[10] It was feared that in the case of individual factories or small segments of an industry the Taft-Hartley Act would not be applicable.

President Truman referred twelve disputes to the Wage Stabilization Board, while twenty-one were voluntarily submitted for consideration by the parties involved. The board was able to obtain peaceful settlements in disputes involving the production of oil, aluminum, aircraft, and the metal fabrication of essential defense items.[11]

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[8] U. S. Congress, House of Representatives, Disputes Functions of the Wage Stabilization Board, Hearing before a Sub-committee of the Committee on Education and Labor, U. S. House of Representatives, 82nd Cong., 1st Sess., on H. Res. 73, May 28, 1951 (Washington: Government Printing Office, 1951), p. 15.

[9] U. S. Congress, Senate, National and Emergency Labor Disputes, Hearing before Sub-committee on Labor Management Relations, U. S. Senate, 82nd Cong., 1st Sess., on S. bill 2999, April 15, 1952 (Washington: Government Printing Office, 1952), p. 50.

[10] Ibid.

[11] Ibid., pp. 120-121.

A typical example wherein the board was able to induce a peaceful settlement occurred in a dispute between Local Number 4347 of the United Steel Workers of America and the Garfield, Utah, plant of the American Smelting and Refining Company. President Truman referred this case to the board for investigation on July 26, 1951, and after a wire from the board urging a resumption of production the strikers returned to their jobs. Recommendations were submitted to the President and the disputants simultaneously on September 13, 1951, and one week later a contract was signed on the basis of the board's suggestions.[12]

The labor dispute in the nonferrous metals industry and the action taken by the Wage Stabilization Board in this dispute was used by President Truman and his advisors as an argument that the board's dispute functions were merely supplementary to Taft-Hartley action. The board sent a wire to both parties requesting an immediate resumption of work. The companies complied with the request, but the International Union of Mine, Mill, and Smelter Workers refused to give any assurance that its members would return to work. The board refused to investigate the dispute and turned it over to President Truman.[13] He immediately invoked the Taft-Hartley Law and secured an injunction. The workers returned to their jobs for eighty days and in the meantime a settlement was negotiated shortly before the injunction was discharged.

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[12] U. S. Congress, House of Representatives, Investigation of the Wage Stabilization Board, op. cit., p. 1196.

[13] The board wrote to President Truman as follows: ". . .As the board understands its responsibilities under your referral of this dispute pursuant to Executive Order 10233, it would not be appropriate for it to consider the merits of the dispute prior to the resumption of work. Under the circumstances of this case, the board regrets to inform you that it is therefore unable to report to you with recommendations as to fair and equitable terms for settlement." Ibid., p. 1197.

The board was able to achieve settlements in four disputes where there would have been no justification for the application of the Taft-Hartley law. These disputes occurred in individual plants and did not affect an entire industry or even a substantial part of one. Strikes were averted in the Garfield, Utah, plant of the American Smelting and Refining Company, the Long Beach California plant of the Douglas Aircraft Company, in a plant of the Wright Aeronautical Corporation in Woodridge, New Jersey, and in a Boeing Aircraft plant in Wichita, Kansas.[14] Other disputes referred to the board, however, fell within the classification of affecting an "entire industry or a substantial part thereof." Disputes in oil, steel, and nonferrous metals industries were industry wide. Disputes in the Borg Warner Corporation and in the plants of the nation's brass rolling mill and fabricating companies clearly affected a substantial part of their individual industries. A dispute in the Kaiser Aluminum and Chemical Corporation was handled by the board because a strike would have shut off about one-third of the production of this important metal.[15] These disputes were referred to the Wage Stabilization Board when the President could have invoked the Taft-Hartley law in each case. However, with the exception of disputes in the steel and nonferrous metals industries, the board was able to induce the disputants to settle their differences without resort to a strike, thus preventing an interruption of flow of materials essential to the war effort.

Late in November, 1951, negotiations began between one hundred fifty-seven major steel corporations and the United Steelworkers of America (CIO) to reach new agreements that would replace the old contract expiring

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[14] Ibid., pp. 1196-1211.

[15] Ibid.

on December 31, 1951. An impasse developed over some twenty-two issues, the most important concerned with wages and union security. On December 18, 1951, the union gave notice of intent to strike upon the expiration of the contract. The Federal Mediation and Conciliation Service attempted to reconcile the differences between the disputants, but the efforts of the Service failed. President Truman referred the dispute to the Wage Stabilization Board on December 22, 1951. A period of ninety days of consultation and investigation followed. The steel industry refused to accept the recommendations of the board as a basis for a new contract and as a result the union set April 9, 1952, as a strike deadline.[16]

The Steelworkers had demanded union shop and a general wage increase averaging eighteen and one-half cents per hour. It is interesting to note that the board recommended as fair and equitable a blanket twelve and one-half cent hourly increase retroactive to January 1, 1953, to be followed by two increases of two and one-half cents upon the expiration of two six-month periods.[17] The board also recommended that a union shop clause be included in the new contract, the type to be negotiated by the disputants.

As a result the officials of the steel industry lost faith in the Wage Stabilization Board and charged that it was biased in favor of labor. Upon their refusal to accept the recommendations of the board and with a strike looming on April 9, President Truman ordered the Secretary of

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[16]Excellent background material on the steel dispute can be found in the following references: Sylvester Petro, "The Supreme Court and the Steel Seizure," Labor Law Journal, III (July, 1952), pp. 451-454. John P. Roche, "Executive Power and Domestic Emergency," Western Political Quarterly, V (December, 1952), pp. 592-619. Glendon A. Schubert, Jr., "The Steel Case: Presidential Responsibility and Judicial Irresponsibility," Western Political Quarterly, VI (March, 1953), pp. 61-78.

[17]U. S. Congress, Senate, National and Emergency Labor Disputes, op. cit., p. 86.

Commerce to take possession of the steel mills. He cited no statutory authorization for his order but relied on his general powers as Chief Executive under the Constitution of the United States.[18]

President Truman justified his seizure order by pointing out that he had declared the existence of a national emergency on December 16, 1950, so as to enable the United States to repel threats to its national security and fulfill its responsibilities to the United Nations. The President pointed out that the production of steel was necessary to carry out both commitments and that a strike in the steel industry would jeapordize and imperil the whole defense effort. Under such circumstances as these, President Truman felt that his general powers as chief executive justified seizure of private property.[19]

The union did not strike against the new owner, the government, and full-scale production of steel continued without further interruption until April 30, 1952, when Judge David A. Pine of the Federal District Court for the District of Columbia ruled that the seizure of the steel mills was an unconstitutional act and therefore invalid. Later on that same day the Court of Appeals for the District of Columbia voted in a five to four decision to stay the preliminary injunction ordered by the district court, pending an attempt by both parties to have the Supreme Court review the case. The court issued a writ of certiorari on May the third and hearings began nine days later.

This case involved not only the question of whether the President could seize private property during emergency periods, but also certain

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[18] U. S. National Archives, Federal Register, Executive Order 10340, Vol. XVII (Washington: Government Printing Office, 1952), p. 3141.

[19] Ibid., pp. 3139-3141.

basic constitutional concepts concerning the nature of executive power. The issue of whether or not the President possessed "inherent" executive authority had to be adjudicated.

The Solicitor General and Acting Attorney General, Philip B. Perlman, argued in defense of President Truman's seizure order. Acting Attorney General Perlman stressed the existence of emergency conditions and asserted that a steel strike would have resulted in a national catastrophe. The seizure order, argued Perlman, was a war time act taken under emergency conditions much in the tradition of similar emergency actions ordered by Presidents Lincoln, Wilson, and Franklin Roosevelt. He cited President Roosevelt's seizure of the property of the North American Aviation Company six months before Pearl Harbor as an example of the utilization of "general" or "inherent" executive power in the past. Perlman contended that in order to further or to preserve national security, the President had inherent executive powers to justify action that was necessary to ward off threats to that security.[20] One interesting feature of the steel case, as it was pleaded before the Supreme Court, was the constant interruption of Perlman's arguments by a majority of the justices. The carping and leading questions shot at the Solicitor General made it quite evident, even before the case was well under way, where the sympathies of the majority lay. On the other hand the elderly Mr. John W. Davis, attorney for the steel companies, was allowed to deliver his arguments without interruption.[21]

John W. Davis, a leading constitutional lawyer, argued that since Congress had legislated certain procedures which the President could use

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[20] New York Times, May 13, 1952, pp. 1 and 22.

[21] Schubert, op. cit., pp. 62-63.

at his discretion in such a case, the very existence of Taft-Hartley national emergency labor dispute provisions mitigated against the President's right to utilize an alternate weapon. Davis contended that any historical precedents used to justify seizure were without validity since no seizure had been made since Congressional law had provided another approach to the problem. Davis also took opportunity to deny the existence of an actual war by reminding the court of President Truman's use of the term "police action" to describe the Korean struggle.[22]

On June 2 the Supreme Court by a six to three decision denied that the President had executive authority to seize the steel mills. Justice Black wrote the majority opinion, but it is important to note that the other five justices agreeing in the judgment of the court felt compelled to write separate concurring opinions. Black reasoned that a judicial determination of the constitutionality of seizure was necessary because individuals concerned could recover damages in the Court of Claims. A majority of the justices declared that seizure was not authorized under the Constitution or the statutes because no law expressly or by implication permitted such an action. Congress had recorded its opposition to the seizure technique when it had debated the merits of the Taft-Hartley law in 1947. Black denied that the President had inherent power to seize industry, but declared that seizure was "a job for the nation's lawmakers."[23] The full implication of the majority opinion was to uphold a rigid interpretation of the separation of executive and legislative power. This was expressed in the following words:[24]

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[22] New York Times, May 14, p. 1.

[23] Youngstown Sheet and Tube Company et al v. Sawyer, 343 U. S., p. 587 (1951).

[24] Ibid.

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he things wise and vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.

The majority felt that the executive order issued seizing the steel mills did not direct that a Congressional policy be executed in a manner prescribed by Congress, but rather it directed that a presidential policy be executed in a manner prescribed by Harry Truman. The court in effect gave Congress an open invitation to legalize seizure by holding that the power of Congress to adopt such a policy and make it law was "beyond question."[25] Black then refuted the concept that the President could assume independent powers to protect the country from calamity by remarking that the "Founders of this Nation entrusted the lawmaking power to Congress alone in both good and bad times."[26] The bold action of Judge Pine stood affirmed.

Black was joined in the opinion and the judgment of the court by Justices Frankfurter, Douglas, Jackson, and Burton, while Justice Clark concurred in the judgment, but not the opinion of the court.

Justice Frankfurter added little to the majority opinion except a lengthy analysis of the history of seizure. He concludes that Congress had in effect, although not expressly, disapproved of the use of seizure by the President. He reasoned that Congress in passing the Taft-Hartley law said to the President: "You may not seize. Please report to us and ask for seizure power if you think it is needed in a specific situation."[27] After examining the Defense Production Act, the executive order

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[25] Ibid., p. 588.

[26] Ibid., p. 589.

[27] Ibid., p. 603.

establishing a reconstituted Wage Stabilization Board, and the Selective Service Act of 1948, Frankfurter in his analysis of Congressional intent could find no authority for seizure and interpreted the silence of Congress as an implied rejection of such authority.

Justice Douglas was of the opinion that an emergency did not create executive power, but "merely marked an occasion when power should be exercised."[28] Douglas reasoned that seizure was not an act executing the law, but constituted an act whereby the Chief Executive created his own law. Douglas further reasoned that because seizure was in effect a legal condemnation of property and required the payment of compensation under the Fifth amendment, it was necessary to raise revenue to pay for damages, an act that was clearly legislative and not executive by its very nature.[29]

The concurring opinion of Justice Jackson does not lend itself to summarization. Jackson believed that the President could act in only three ways: (1) action that is consistent with and authorized by a statutory delegation of power; (2) steps taken in a twilight zone where the President acts in the absence of statutory policy; (3) action that is taken in direct conflict with the expressed or implied will of Congress. Jackson thought that presidential power was the strongest when it fell in the first category. In the second classification, independent action might sometimes have been permissible as a result of Congressional inertia, but any test of power in such a case would be dependent on the circumstances as they existed at that time and not on any abstract theories of law. Jackson reasoned that Presidential action was weakest when it was taken

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[28] Ibid., p. 629.

[29] Ibid., pp. 629-634.

in conflict with the will of Congress, because if such an act was legal the only logical conclusion that could be derived would be that Congress was disabled from acting on the subject. Jackson asserted that executive seizure of property violates the intent of our forefathers unless Congress gives the President statutory authority to commit such an act. He pointed out that since Congress under the Constitution was responsible for raising, supporting, and making rules for our armed forces that the President commands, it necessarily followed that Congress, not the President, should be the major source of war powers. Other evidence of Congressional primacy in all war acts, such as seizure, might be found in the Third Amendment to the Constitution which declares that any seizure of private homes for military purposes in time of war must be done in a manner prescribed by law, and Jackson declared that law was made only by Congress. Thus Jackson concluded that until Congress acted on the matter of seizure, the President did not have constitutional authority to seize the steel industry.[30]

Justice Burton emphasized that the steel seizure did not occur when the nation faced the immediate threat of invasion or attack. Burton's agreement with the majority was made on the basis of the circumstances existing when seizure occurred, and not on the basis of what might happen if the President took similar action during the emergency of total war.[31]

Justice Clark declared that when Congress established specific procedures to deal with this type of crisis, the President must execute Congressional policy. In the absence of Congressional action the exercise of independent power depends upon the gravity of the situation. Clark believed that the President had ignored statutory procedures that would

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[30] Ibid., pp. 634-655.

[31] Ibid., pp. 659-660.

have legalized seizure. He pointed out that the Selective Service Act of 1948 authorized seizure only when producers of war material failed to supply necessary products. Clark felt that the President should have placed compulsory orders with the steel mills and then seized them after they were unable to fulfill their obligations because of the strike.[32]

Chief Justice Vinson was joined in a vigorous dissent by Justices Reed and Minton. Vinson asserted that the majority had ignored the existence of a national emergency where American men were engaged in open combat in Korea and were stationed all over the world with the government committed to halt the expansive force of communism. Congress had created an army of millions of men, spent billions for defense contracts, and appropriated billions more to build up the defenses of our allies. In order to execute these Congressional policies steel was necessary; thus, as a component of his general duty to execute all Congressional policy, the President had authority to seize the steel mills. Vinson relied on judicial precedent established in United States v. the Midwest Oil Company. In this case the court upheld President Taft's order withdrawing public oil lands from sale despite a law that opened them to purchase on the free market. Taft had taken action in this domestic emergency because the nation's reserves of oil were being depleted by sales to private oil corporations and there was no time for Congressional action. Vinson reasoned that if the court upheld the existence of executive power to act in the Midwest Oil Company case, then President Truman had inherent power to seize the property of the steel companies in the face of an international crisis. Thus Vinson rejected what he called the majority's

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[32]Ibid., pp. 661-667. For Jackson's unique solution see Note 14 on page 666.

"messenger boy" concept of Presidential power.[33]

President Truman sent a special message to Congress requesting seizure powers and defending his action in the steel case. He pointed out that two courses of action were open, the utilization of the Taft-Hartley law or a Congressional grant of seizure power. Truman believed that invoking the Taft-Hartley law would be unwise and unfair to labor because the practical results ensuing from it had already been obtained. An investigation had been completed by the Wage Stabilization Board, and the delay resulting from injunctive action had been accomplished because the steel worker's union had already voluntarily postponed strike action for ninety-nine days. Truman declared that it would be unjust to require labor to continue work for eighty more days under conditions they considered unfair after their voluntary abstention from striking. Utilization of the Taft-Hartley law would postpone management's incentive to settle for another eighty days. Truman also argued that even an injunction might not result in a resumption of production as had occurred in the 1950 coal dispute. The President pointed out that seizure was the preferable approach to the problem since the government would be able to operate the plants until a contract was negotiated, instead of being limited to eighty days as provided for in the Taft-Hartley injunction. Thus the nation would be assured a normal supply of steel for as long as it took to settle the dispute by utilizing the seizure method.[34]

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[33] Ibid., pp. 667-710.

[34] Congressional Record, 82nd Cong. 2nd Sess., Vol. XCVIII, Part V (Washington: Government Printing Office, 1952), pp. 6929-6930.

In reply Congress enacted the Defense Production Act Amendments of 1952 which abolished the disputes functions of the Wage Stabilization Board. The law further called upon the President to invoke the Taft-Hartley law immediately in the steel dispute.[35]

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[35] U. S. Statutes at Large, Vol. LXVI, p. 305 (1952).

CHAPTER V

CONCLUSIONS

In 1946 both the Congress and the President were in agreement that strikes in key industries that endangered the public health and safety were domestic emergencies. However, during the administration of President Truman the problem of national emergency strikes became the crux of a long and often bitter struggle between Congress and President Truman. The struggle centered around which branch of the government, the legislative or the executive, had the primary responsibility of providing measures that the government could employ to intervene in critical strike situations.

In the Taft-Hartley law was embodied the concept that Congress should decide what was to be done when the nation faced internal domestic emergencies caused by labor disputes. In this law the legislative branch deemed it appropriate to give the Chief Executive discretionary power to intervene in such disputes. However, Congress asserted its claim to final responsibility for action in national emergency strikes by requiring a Presidential report to Congress if the emergency remained a threat after all the steps in the Taft-Hartley law were exhausted. Congress felt that it should deal with such disputes on a case-by-case basis if the necessity arose.

President Truman lost no time in attacking the Taft-Hartley approach to the problem. In his veto message it was pointed out that Congressional control over this problem would mean that labor issues would be placed into the political arena for consideration. President Truman sought to

undermine the Congressional approach to the national emergency strike problem by refusing to invoke the Taft-Hartley procedures in the steel dispute of 1949. He adopted an independent approach to the solution of the steel crisis by appointing a non-Taft-Hartley board of inquiry with full power to investigate and make recommendations for the settlement of the dispute. In 1950 he proposed a similar plan when faced with a national emergency strike in the bituminous coal fields. Thus the President sought an alternate technique whereby he could avoid applying the law. He resorted to the Taft-Hartley law in the coal strike only after John L. Lewis had bluntly rejected his proposal for an unofficial fact-finding board.

With the outbreak of the Korean War, the President sought other devices which would enable him to avoid using the Taft-Hartley law. By executive order, he established a reconstituted Wage Stabilization Board with labor dispute functions. At his discretion he could refer any labor dispute that affected defense production to this board for consideration. It is significant that the only occasion during the Korean emergency where the President invoked the Taft-Hartley procedures was after the Wage Stabilization Board refused to handle the case.

When the Wage Stabilization Board failed to obtain a settlement in the steel dispute in 1952, President Truman turned to other means of securing the uninterrupted production of steel. Rather than utilize the discretionary powers granted to him under the Taft-Hartley Act, the President asserted that because of executive power inherent in his office, he could seize the steel industry in order to protect the public interest. However, the Supreme Court invalidated the seizure and declared that it was the obligation of Congress and not the President to determine what labor policy should govern in emergencies. Even this historic decision

did nothing to deter the President's opposition to the Taft-Hartley approach to the problem. After seizure, the traditional executive weapon used in national emergency strikes, had failed in the steel case, President Truman adopted a policy of negativism by refusing to invoke the Taft-Hartley procedures. Even after Congress, by statute, called upon the Chief Executive to exercise his powers granted under the Taft-Hartley law, the President preferred to allow the steel strike to continue for two months rather than resort to the Congressional approach to the solution of national emergency strikes.

The struggle between Congress and the President was conditioned to some extent by the fact that they each represented to some degree divergent interests. President Truman owed political debts to organized labor who had contributed both influence and money to his campaign for President in 1948. On the other hand Congress was dominated by a combination of Republicans and anti-Fair Deal Democrats who tended to support policies favored by business interests. The application of the Taft-Hartley law and the President's repeated suggestions for other types of action must be viewed in the perspective that the President and a Congressional majority represented pressure groups with clashing political and economic interests.

An Evaluation of the Taft-Hartley National Emergency Strike Provisions

Despite the fact that the Taft-Hartley law was administered by an individual who was committed politically to see that it was repealed, it was applied nine times. In these nine practical applications of Taft-Hartley measures weaknesses in the law became apparent.

Boards of Inquiry. The current provisions of the law make the submission of a report by a board of inquiry a condition precedent to the

President's requesting the Attorney General to petition the courts for an injunction. Apparently Congress required the board of inquiry reports to be made public in an effort to mobilize public opinion behind a settlement of the controversy. Also, Congress intended that the board, as a group of disinterested experts, should provide government officials with accurate information concerning the facts of the dispute. Experience indicates that these objectives have not been reached with any degree of satisfaction.

The publicity given to the report of the board of inquiry seems to have had little effect as a pressure device to induce settlement. Settlements have been achieved in this type of strike long after the reports were made public, usually near or soon after the date the injunction expired. A partial explanation seems to stem from the expository function of the board. It does nothing that a good newspaper would not do anyway, namely the recording of the demands and position of each party to the dispute. Although the facts relevant to a dispute may not be known in the detail in which they are set forth in the reports of the board of inquiry, the main facts of the case have already been brought to the attention of the public by the press.

The board performs no constructive function which might induce the parties to settle their differences during the injunctive period. By convening and reporting a second time, the board merely reports the last offer of the employer to the President and the position of both parties thus far in the dispute. This accomplishes nothing of importance since the Federal Mediation and Conciliation Service, who attempt to mediate the dispute during the first sixty days of the injunction, are already well aware of the facts of the case including the last offer made by the employer.

One way which might make the board more effective is to give it the authority to make recommendations. As matters stand now unless the Federal Mediation and Conciliation Service makes recommendations, a procedure it usually refrains from doing, a dispute can run the eighty-day period of the injunction without any government recommendations as to settlement. It might reasonably be argued that recommendations for settlement made by a disinterested board of experts would bring more public pressure to bear on the parties, than the mere recording of the facts of the case. This would in effect give the board a mediatory function and quite possibly might even eliminate the need of utilizing the Federal Mediation and Conciliation Service in the dispute. This would have the effect of making one government agency instead of two responsible for action during the injunction period.

In order to obtain expert information the board of inquiry must be given sufficient time to convene, investigate, hold hearings, prepare and submit a report, and still leave the Attorney General enough time to apply for an injunction. Experience seems to indicate that the more important and vital the dispute, the less time the board takes for investigation. The boards seemingly feel that they must make hurried investigations because of public pressure to end quickly disruptive strikes. Only four days were required for the board to investigate and submit a report in the coal dispute of 1948. Despite the fact that about two weeks are needed to perform its duties properly, the boards of inquiry appointed by the President used eight days in the maritime dispute in 1948, one day in the Atlantic coast longshoremen's dispute in 1948, five days in the bituminous coal dispute in 1950, and five days in the nonferrous metals dispute in 1951. Congressional action seems necessary in order to provide the board more time to perform its duties. Perhaps the injunction

should be issued before the investigation is made.

Last offer Ballots. The provision of the Taft-Hartley law which requires a vote on the employer's last offer does not perform any useful service. In the three instances where such votes have been taken, one election was boycotted by the union, while in each of the other two the employer's last offer was rejected by a large majority. If the rank and file of union members accepted the last offer of the employer they would in effect repudiate their leaders who had previously refused the terms offered by the employer. Such an action would decrease the power of the union at the bargaining table in future negotiations. Acceptance of such an offer would be interpreted as a serious blow to the prestige and power of the union, a step that most union members would be unlikely to take.

The only possible value that such a procedure might have is that of a pressure device to induce unions to settle. Union officials who expected to lose such a vote would probably come to terms before the election could be held because of their reluctance to demonstrate the weakness of the union. However, in modern labor-management relations it is difficult to believe that any of the unions that have organized our basic industries are that weak.

The obvious conclusion is the one offered in 1949 by Senator Taft, namely that this part of the law should be eliminated.

The Injunction. The injunction has accomplished the purpose that it was intended for. It forestalled harmful strikes for eighty days in five out of the six disputes where it was applied. On one occasion, however, in the bituminous coal dispute in 1950, the injunction did not delay or bring to a halt a wildcat strike of the bituminous coal miners. However, if Judge Keech had applied Judge Goldsborough's interpretation of sections 206 through 210 of the Taft-Hartley law, the government officials might

not have been made helpless in this dispute. Generally then it might be concluded that the injunction is an effective device in delaying the effects of strikes that are classified by the President as national emergencies.

The weakness of the injunctive process is that it does not provide an effective means whereby the government can induce the parties to settle during the cooling-off period. As a result, the eighty day period becomes a breathing spell where both parties relax and lose a sense of urgency to settle. The parties await the next deadline date, the discharge of the injunction, before renewing their efforts to resolve the dispute. The Federal Mediation and Conciliation Service declared that the efforts of the Service to encourage the parties to bargain during the injunction period, with a view to early settlement, fell on deaf ears.[1] In the five cases wherein the injunction was effective, settlements were reached either very close to the date the injunction expires or soon after it was discharged. The need seems to be to provide some type of effective pressure during the delay period to induce settlement. A partial answer might be to give the board of inquiry a mediatory function by allowing it to make recommendations.

An Evaluation of the Seizure Method of Handling National Emergency Strikes

Seizure has been the traditional means of handling such strikes, and this method has been consistently supported by the executive branch of the government. President Truman requested that Congress give him seizure powers on at least two occasions after the enactment of the Taft-Hartley

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[1]Federal Mediation and Conciliation Service, op. cit., pp. 56-67.

law. He asked that Congress permit him to seize the coal mines after Judge Keech's decision had rendered an injunction secured under the Taft-Hartley law ineffective. The Chief Executive also requested that Congress permit him to seize the steel industry after the Supreme Court had invalidated his earlier claim to inherent power to seize property during an emergency.

Seizure in reality is a method the government uses to force acceptance of its recommendations in a specific dispute. If seizure is caused by an employer's refusal to accept a government board's recommendation, the federal authorities usually put them into effect through their own orders in their capacity as new owners. If the government finds that the employer is right and should be supported as against union demands, the government usually breaks up the strike by various methods such as refusing to listen to grievances until work is resumed, or securing an injunction to prohibit a strike against the government, or on occasion even by using troops. Seizure then in reality amounts to a system of compulsory arbitration.

Future Policies toward the National Emergency Strike

Since Congress has often gone on record as being opposed to compulsory arbitration there seems to be little likelihood that seizure will become a permanent means of resolving national emergency disputes except during all out war time conditions. The answer seems to be that Congress should strengthen the Taft-Hartley process and make it a more workable system to safeguard the public against national emergency strikes.

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