# A STUDY OF STRIKE SUBSIDIES

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ABSTRACT

A STUDY OF STRIKE SUBSIDIES

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Often public attention and sometimes public policy in the labor field are directed toward specific industrial encounters with emphasis, correspondingly, being placed upon expedient and quick solutions. Thus, the fact that the institution of collective bargaining itself has changed as it has evolved overtime frequently escapes the attention of the traditionally oriented observer. One such alteration has been the introduction of a variety of strike subsidy devices. For the purpose of this study, a strike subsidy is defined as a payment to a party directly involved in a strike--either individual or group, labor or management--that stems from a formally written or tacitly understood private agreement or public statute and is intended to lessen the economic impact associated with the suspension of income or revenue during a strike period.

The adoption and implementation of these devices, however, have been quite selective rather than universal. In quest of an explanation for their relatively limited acceptance, the characteristics and structure of bargaining

in those industries in which strike subsidization has become most prevalent and significant are studied.

The specific employer devices included in the study are the comprehensive programs currently in operation in the airline, newspaper, and railroad industries and the smaller scale plans in the Hawaiian sugar industry and the southern California agriculture industry. Several other mutual assistance programs that--to date--have not progressed passed the proposal stage are also included.

In a similar fashion, the strike subsidy devices employed or available to national unions are also examined. The specific devices surveyed are national union strike benefit programs; unemployment compensation for primary strikers; strike assistance provided by public and private agencies; and a proposed--but now abandoned-- plan for the creation of a strike insurance program for union members in A.F.L.-C.I.O. affiliated unions.

Information concerning the impetus for the creation of these programs, the procedures by which they operate, and the degree to which they have achieved their originally envisioned goals was obtained mainly through personal interviews with spokesmen for the involved groups. In addition, more detailed data was gathered through access to the research facilities of the trade associations, labor organizations, law firms, and government agencies concerned with the establishment, administration, and supervision of these plans.

Having examined individually the current programs and the associated bargaining settings that have spawned these devices, a comparative analysis of the common attributes of bargaining in these industries is undertaken. As a result of this comparison, it is concluded that the development of these mutual assistance programs has been motivated by more than simply an attempt to reduce the financial losses associated with a strike. Rather, these devices often appear to be the outward manifestation of shortcomings that presently plague certain bargaining relationships. The evolution and perfection of these formal strike assistance programs, therefore, has been largely a repercussion from several unstable features of particular bargaining structures. These characteristics, in turn, serve simultaneously to explain both the motivation for the establishment of the existing programs in certain bargaining situations and the unlikehood that they will spread in any meaningful way into others.

The study ends with several recommendations for public policy in this area.

# A STUDY OF STRIKE SUBSIDIES

By

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# INTRODUCTION

Often public attention and sometimes public policy in the labor field are directed toward specific industrial encounters with emphasis, correspondingly, being placed upon expedient and quick solutions. Thus, the fact that the institution of collective bargaining itself has changed as it has evolved over time frequently escapes the attention of the traditionally oriented observer. One major alteration, which this dissertation undertakes to examine, has been the introduction of a variety of "strike subsidies." For the purpose of this study, a strike subsidy shall be defined as a payment to a party directly involved in a strike--either individual or group, labor or management--that stems from a formally written or tacitly understood private agreement or public statute and that is intended to lessen the economic impact associated with the suspension of income or of revenue during a strike period. The scope of the study is designed to be sufficiently broad to encompass the varied subsidy devices. At the same time, the study will specifically exclude the numerous informally agreed upon forms of strike assistance. One such excluded tactic is the practice of some unions which employ the hiring hall principle of reclassifying or relocating their members during strike

periods in order that they might be employed elsewhere. Similarly, the existence of provisions in some government contracts and in corporate tax laws which, in effect, grant the financial support of the government to a struck employer are also excluded from discussion. Other informal devices could be cited, but while known to exist, they are typically quite difficult to verify and to document. In any event, the concern of this thesis will be limited solely to the formal strike subsidy programs that are most prominent and furthest advanced in their implementation and operation.

The relationship of the strike to the institution of collective bargaining is one of fundamental significance. Professor Neil W. Chamberlain has stated the relation to be as follows:

> Collective bargaining is a process of voluntary agreement, but agreement comes when the terms proposed by one of the parties appear more advantageous to the other than disagreement on those terms. Agreement thus depends on making disagreement costly. It is here that the strike--whether initiated by the union in support of demands which it makes on management or in rejection of demands which management makes on it--plays its part.
>
> A stoppage of work is the chief means which the parties have of making disagreement costly to the other. The union threatens loss of production if management does not grant the concessions sought, in the belief that the consequent loss of employment to its members will be less costly than agreement on the counterterms proffered by management. Or management threatens loss of employment if the union does not consent to its conditions, in the belief that the consequent loss of production will

> be less onerous than acceptance of the union's position. It is only when for either union or management loss of employment or loss of production is less advantageous than acceptance of the other's conditions that agreement is reached.
>
> The strike thus emerges as the most effective method of bringing pressure to bear on the other party in order to secure an agreement on terms. Without it--or the threat of its use--the agreement process would be unworkable.[1]

The development of strike subsidy programs has been in direct response to quests by both labor and management to find methods to reduce the economic pressures attributable to the strike. These devices presently represent the culmination of efforts by each side to minimize the economic damage that the other side can inflict upon it as the result of a bargaining impasse. The effect of the presence of these mutual assistance plans is to mitigate both the business accounting costs and the economic opportunity costs associated with the strike. In the process of providing a partial income stream during a strike period, these devices have established an element of economic insulation. Such protection seeks as its primary objective to offset the supposed impelling powers for settlement--as outlined by Professor Chamberlain--that have in the past been associated with a threatened or actual strike.

The question concerning the compatibility of strike subsidy devices with the public interest in collective

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[1]Neil W. Chamberlain, Social Responsibility and Strikes (New York: Harper and Brothers, 1953), p. 278.

bargaining was first raised by W. Willard Wirtz--an ex-professor of labor law and currently Secretary of Labor. Secretary Wirtz commented as follows:

> Private collective bargaining seems to me to work only where one party or the other will be hurt before the public is hurt, and where one party or the other will be hurt badly enough to move toward a settlement before the public is hurt.
>
> In situations where employees receive strike benefits of one kind or another, and employers receive insurance payments which lessen the shock to them, there is a likelihood that the public is going to be hurt before either party is hurt enough to yell "uncle."[2]

The right to strike--while admittedly not an absolute right--represents a pillar of support to the maintenance and perpetuation of the system of collective bargaining in our nation. In recent years, the incidence of strike occurrence has declined sharply in the United States.[3] Nevertheless, the growing interdependency of our society has witnessed increasing public dissatisfaction over the inconveniences associated with some of the strikes that have taken place. Secretary Wirtz has commented as follows:

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[2]John Herling, "The Strike Problem," Washington Daily News (January 10, 1963), p. 23; also see Lee M. Cohen, "Wirtz Sees Public Harm in Strike Fund Practices," Washington Star (September 26, 1962), p. A-22; W. Willard Wirtz, "The Challenge to Free Collective Bargaining," Proceedings of the Sixteenth Annual Meeting of the National Academy of Arbitrators (Washington: Bureau of National Affairs, 1963), p. 300.

[3]Arthur M. Ross, "The Prospects for Industrial Conflict," Industrial Relations (October, 1961), pp. 57-74.

> . . .[P]ublic toleration for strikes is diminishing rapidly
>
> This is partly a matter of economics. With the increasing specialization of functions in the economy, and with the increasing interdependence of its units, more non-participants are hurt harder and faster by a shutdown than used to be the case. We have always insisted that competition--which includes competition between employers and employees--is worth what it costs the rest of us; but the cost has been going up.[4]

In the same vain, Professor Chamberlain has written:

> Because of the integrated nature of the American economy, a strike has consequences far more ramifying than are revealed by consideration of whether consumers can get along for a time without the final product. Producers who rely on the struck product, and others who depend on goods made with the struck product, as well as suppliers of the struck unit, and other firms who supply not only the suppliers of the struck unit but also the directly and indirectly affected producers are all caught in the backwash of a stoppage. In many instances these repercussions are minor and work no substantial hardship, but in other instances they constitute the most important effects of a strike.[5]

Strike subsidy devices of both labor and management are specifically designed to influence the force of a threatened strike or the course of an actual strike. For that reason, their role in the furtherance of the avowed goal of our nation's labor policy of encouraging collective bargaining needs to be assessed carefully.

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[4]Wirtz, op. cit., p. 300.

[5]Neil W. Chamberlain and Jane M. Schilling, The Impact of Strikes (New York: Harper and Brothers, 1954), p. 251. See also the related discussion contained in Chamberlain's study on pp. 1-7 and 251-3.

The actual development of most of these mutual assistance programs, however, represents a phase of an evolutionary process that is motivated by more than simply an attempt to reduce the financial losses associated with a strike. These devices often appear to be the outward manifestation of a pattern of shortcomings that are inherent in some bargaining relationships. Hence, the thesis of this study is: the development of formal strike subsidy devices has been largely a repercussion resulting from the common characteristics of particular bargaining structures and environments which simultaneously explain the impetus for their evolution in certain industries and limit the prospects of their introduction into other industries.

Part I seeks to identify, to explain, and to comment briefly about the mutual assistance plans established by employer groups. Emphasis is placed upon the most advanced programs that are currently in operation in the airline, newspaper, and railroad industries. Each of these three programs is discussed within the framework of the bargaining structure and environment that characterize labor-management relations in these industries. Part II duplicates the process for the relevant devices unions have developed. In order to avoid redundancy, much of the discussion concerning the development of industrial relations in the three industries discussed in Part I--much of which also tends to explain the emphasis upon such devices by the unions in

these industries--is omitted from Part II. Part III contains a summary section which undertakes to compare the similarities and dissimilarities of the specific devices and bargaining structures in which strike subsidization has become most advanced. In addition, Part III will contain the conclusions and policy recommendations which this writer has drawn from the study.

# Part I

# MANAGEMENT STRIKE SUBSIDY DEVICES

# CHAPTER I

## THE "MUTUAL AID PACT" OF THE AIRLINE INDUSTRY[1]

### Introduction

On October 30, 1958, representatives of six of the nation's twelve domestic trunk-line carriers and one international carrier signed an agreement, effective retroactively to October 20, 1958, establishing a program for partially protecting a struck participant from the normal economic losses associated with a strike period.[2] The plan is known as the "Mutual Aid Pact." The original six carrier signatories[3] and the four other trunk-line carriers[4] who later joined the pact usually account for approximately

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[1]See Appendix A for a brief chronological outline of the major events relevant to the development of the current status of the Pact.

[2]See "Joint Exhibits of the Airline Parties," Vol. I, C.A.B. Docket 9977 (March 31, 1962), Joint Exhibit No. 1, pp. 1-6, for a detailed account of the fifteen days immediately preceding the signing of the Pact.

[3]American Airlines, Inc., Capital Airlines, Inc., Eastern Airlines, Inc., Pan American World Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc.

[4]Braniff Airways, Inc., Continental Air Lines, Inc., National Airlines (National no longer is a member), and Northwest Airlines, Inc.

ninety per cent of the annual trunk-line traffic carried in the nation.[5]

Under the provisions of Section 412 (b) of the Federal Aviation Act,[6] it was the statutory obligation of the carriers to present the agreement to the Civil Aeronautics Board (C. A. B.) for review. The C. A. B., in turn was required under the law to rule as to whether or not the objectives of the Pact were adverse to the "public interest." On May 20, 1959, the C. A. B., in a 4-1 vote, extended its approval to the Pact subject to one minor modification. In the original agreement, it was proposed in the event of a strike affecting a Pact member that the struck carrier would refer its customers to the available flights of other Pact participants. Concerned with the competitive implications of this clause, the C. A. B. asked that it be removed and the carriers acceded. It is important to note that the C. A. B.'s approval was granted at that time without the benefit of an evidentiary investigation and record having been compiled. In other words, the Pact was judged simply on its "face" value. This procedure led dissenting Board member G. Joseph Minetti to charge that the failure of the C. A. B. to hold a formal hearing to take evidence on this

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[5]Civil Aeronautics Board Order No. E-15413, p. 3. Delta Airlines, Inc., Northeast Airlines, Inc., and Western Airlines Inc., have not to date been members of the Pact.

[6]49 U. S. C. 1382.

plan "is more consistent with laissez-faire concepts than with regulatory responsibility."[7]

Within a year after the initial C.A.B. ruling, the original six carriers had been joined by four others due, essentially, to the widening of the coverage conditions of the Pact. The combination of the enlarged scope of the agreement, the extended application of its membership, and the filing of a detailed list of objections by six of the major labor unions in the industry led the C.A.B. to reconsider its earlier passive position. Hence, on June 20, 1960, the C.A.B. ordered a thorough investigation to be undertaken. As a result, a long and detailed record has been developed over the four-year period. On July 16, 1964, the C.A.B.--in a split vote of three in favor, one opposed, and one in favor in part and opposed in part--granted approval to the Pact for a limited three-year trial period.

## General Nature of Labor Relations in the Industry

Before discussing the Mutual Aid Pact itself, it is important to comment briefly upon the general nature of labor relations in the industry. Unquestionably, the dominant feature of virtually every aspect of this industry is

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[7]Richard E. Mooney, "C.A.B. Aide Scores Strike-Pact Plan," New York Times, May 21, 1959, p. 62.

the degree of direct and indirect involvement of the federal government. As one writer has commented:

> Scheduled air transportation has always been the object of paternal federal concern and, in fact, originated as a public enterprise under Post Office sponsorship from 1918-1925.[8]

The beginning of public regulation of industrial relations in the industry dates back to 1936. In that year, Title II was added as an amendment to the Railway Labor Act of 1926. The amendment[9] extended virtually all of the legal provisions applicable to railway labor relations under Title I to the airline industry. Later, in 1938, the Civil Aeronautics Act was passed. This law had the direct effect of establishing the C.A.B. as the regulatory agency for the industry and the indirect effect of perpetuating the industry structure that has continued to prevail up until today.[10] Under the tenure of the C.A.B., the market structure has been such that approximately ninety per cent of the annual air traffic

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[8]Mark L. Kahn, "Mutual Strike Aid in the Airlines," Papers Presented at the 1960 Spring Meeting of the Industrial Relations Research Association (May, 1960), p. 596.

[9]149 Stat. 1189.

[10]Horace M. Gray, "The Airline Industry," in The Structure of American Industry, Walter Adams (ed.) (3rd edition; New York: The Macmillan Company, 1961), pp. 474-475. Since its establishment, the C.A.B. has not issued a single new trunk-line certificate. Aside from the "piecemeal extensions," "modifications," and the transforming of "certain monopoly routes into oligopoly routes," the C.A.B. has refused to alter the original industry pattern that existed in 1938.

is carried by trunk-line carriers. With respect to labor policy, the Act of 1938 required that any carrier desiring to secure and to retain a certificate of convenience and necessity must comply with Title II of the Railway Labor Act.[11] In 1958, the Federal Aviation Act was passed. Under this statute, most of the safety functions of the C.A.B. were taken over by the Federal Aviation Agency. The Act of 1958, however, also placed increased responsibilities upon the C.A.B. One of the stipulations of the Act was that the C.A.B. was to use as a criterion in evaluating the acceptability of the actions of its subjects, the manner in which those actions affect the "public interest."

The major explanation for the industry characteristic of extensive governmental intervention into virtually every facet of its operations is to be found in the historical nature of the relationship between the industry and the economy.[12] Originally, the industry assumed an important role--which it has maintained--in the development of the postal system of the nation. Later, as the civil and military potentialities of the airplane were realized, the

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[11] Sec. 401(1).

[12] Gray, op. cit., pp. 472-473.

needs of the nation for advanced domestic transportation and developed national defense systems led to further federal involvement. In all periods, the necessity for the establishment and the enforcement of safety standards has meant constant government supervision of many sectors of the industry. Thus, it is only logical to expect that the ramifications of the governmental activities in the industry would affect substantially the conduct of industrial relations. Accordingly, one writer has observed:

> The most casual investigation of the airline industry should reveal that to talk about "free" collective bargaining in such a context is highly unrealistic. this is primarily because airline labor relations cannot escape from the inhibitions imposed by the public's natural concern for the availability and sound development of air transportation. The special procedural constraints of the Railway Labor Act are but a minor part of the total picture. Of major import is the complex dose of economic and safety regulation, combined with subsidization as required, under which the industry has developed.
>
> . . . Unions and managements alike have devoted much effort and large resources to lobbying and representation before the C.A.B. and Congress as they inevitably must. The relative bargaining strength of these unions and employers, even in their ostensibly "private" negotiations, is shaped to a major degree by the impact of governmental economic and safety decisions, so that the Government cannot be neutral with respect to union-management relations even if it would.[13]

The application of the Railway Labor Act has meant that a detailed apparatus for minimizing the likelihood of

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[13]Mark L. Kahn, "Mutual Strike Aid in the Airlines," Monthly Labor Review, June, 1960, pp. 590-591.

work stoppage is applied to the bargaining situation. One distinctive feature of the statute is its detailed regulation concerning the negotiation process. The bargaining participants are required to progress through a series of carefully prescribed "steps"--each designed to enhance the opportunity for a settlement at that stage. These steps include obligatory conferences between the parties; mediation attempts through the auspices of the National Mediation Board (N.M.B.); the use of bipartisan system boards of adjustment--which if a deadlock ensues may bring in a neutral referee--to proffer binding settlements of unresolved grievances and disputes arising out of contract interpretation; voluntary arbitration of issues regarding changes in rates of pay, rules, or working conditions; and the establishment of Presidential Emergency Boards to determine the relevant issues in dispute and, generally, to tender recommendations for terms of settlement. In short, the present law governing labor relations in the industry requires compulsory negotiation and compulsory governmental investigation and recommendations but it does not require compulsory arbitration of new contract terms.

In addition to detailed regulation of the early stages pertinent to the negotiation of a collective bargaining agreement, the Railway Labor Act is also concerned with the administration of a contract once it is is effect.

It is a legally punishable offense for any carrier to alter the wage rates, change a work rule, or vary a working condition,[14] except by following the procedures described in the Act.[15] Thus, one writer has summed up the legal status that affects the collective bargaining environment in the industry with the following words:

> The present Railway Labor Act thus not only assumes that agreements resulting from collective bargaining will have been negotiated and will be in effect for most of the employees in this industry, but also gives these agreements legal recognition as enforceable contracts by either side. Air transportation agreements today, therefore, represent contracts, establishing property rights for individual employees, which are enforceable through adjudication by adjustment boards.[16]

The justification cited for the introduction of this elaborate system of federal participation in matters relevant to industrial relations is that it is considered to be in the best interest of the nation to minimize the incidence of strikes in the field. Thus, the Railway Labor Act was applied to the airline industry to achieve this social goal.[17]

It is against this broad background that the system of labor-management relations in the industry has developed. The first major union to be formed was the Air Line Pilots

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[14]Title I, Sec. 2, paragraph 7.

[15]Title I, Sec. 2, paragraph 6. The procedures involve attempts to make the parties themselves come to terms but, if these efforts should fail, then a ruling by a bipartisan adjustment board--with a neutral referee--if necessary--is final and binding.

[16]E. B. McNatt, Labor Relations in the Air Transport Industry, 1947-57 (Urbana: University of Illinois Press, 1958), p. 7.

[17]Ibid., p. 11.

Association in 1931. In the non-pilot occupations, trade unionism did not come until the early 1940's. In the years following the war, the rapid growth of the industry led to intensive unionization of all categories except the white collar occupations. Currently there are nine unions that represent the major job classifications that bargain with the eleven domestic trunk-lines[18] and one international carrier.[19] In addition, most carriers also bargain with the several other minor unions. Moreover, not only does each trunk-line bargain with numerous unions but also there are, in many cases, several unions that compete to represent each job classification.

The rapid growth in union organization has been accompanied by a large increase in the number of labor agreements on file with the N.M.B. Speaking again in terms of the entire airline industry,[20] the listing shown below is an indication of this development.[21]

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[18]The number of domestic trunk-lines was reduced to eleven on June 1, 1961, when Capital merged with United.

[19]For a detailed listing of the certified employee representatives for each occupation on each individual carrier, See Twenty-ninth Annual Report of the National Mediation Board (Washington: U. S. Government Printing Office, 1963), p. 94.

[20]The "entire airline industry" refers to trunk-lines, feeder lines, non-scheduled lines, and cargo carriers.

[21]Twenty-ninth. . .Board, ibid., p. 85.

| Year | Number of Labor Agreements On file with N.M.B. |
|---|---|
| 1940 | 44 |
| 1945 | 98 |
| 1950 | 241 |
| 1955 | 275 |
| 1960 | 284 |
| 1963 | 286 |

With the rapid growth of multiple unionism has come another distinctive characteristic of industrial relations in the industry. In almost every case, collective bargaining is conducted on a single-carrier and single-union basis. Several factors have given rise to this development. One cause has been the fact that each carrier has dissimilar operating problems. These unique conditions stem from the widespread differences that occur in the route patterns, time schedules, and types of equipment used by each carrier.[22] Another factor has been the craft unionism that has grown out of the Railway Labor Act. A major function of N.M.B. is to resolve employee representation disputes. If a dispute arises between employees over the issue of who is to be their bargaining agent, it is the obligation of the N.M.B. to resolve the question. The N.M.B. is required, upon the request by any party to the dispute, to designate who is to participate in the certification election.[23] The standard relied

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[22]Kahn, op. cit., (I.R.R.A. Paper), p. 597.

[23]Title I, Sec. 2, Paragraph 9.

upon by the N.M.B. to make such decisions is the so-called "majority rule provision" of the Act. Under this doctrine, "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of the Act."[24] This representation provision of the Act was imposed upon the airline employees at a time when the industry itself was in its infancy. In virtually all other industries in the nation--including the railroads--the basis of union organization evolved over time upon a pattern determined by the employees themselves and by the inherent labor market characteristics of the particular industry. In the airline industry, the organizational pattern was decreed by Congress. Accordingly, in commenting upon the forced reliance of the N.M.B. upon the "majority rule provision," one writer has stated:

> This provision, however, apparently guarantees that craft unionism rather than industrial unionism will be the primary structural form of employee organization on the commercial airlines.[25]

Since each craft has now developed its own special problems and since several unions are rivals for the same members, the unions--with the exception of the International Association of Machinists (I.A.M.)--have shown "little or no

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[24]Title I, Sec. 2, Paragraph 4 (The emphasis is supplied).

[25]McNatt, op. cit., p. 8.

interest" in multi-unit bargaining.[26] Still another pressure favoring individual bargaining has been the interpretations given to the Railway Labor Act by the C. A. B. The Board has ruled that multi-unit bargaining "cannot be imposed by any party to a dispute but must come only as a result of the consent of all parties."[27] Thus, since in most instances it is to the advantage of one of the parties not to favor englargement of the bargaining unit, it is usually impossible for both parties to agree to bargain in any other manner than on a single-union and single-employer basis. A final consideration is the fact that the Air Transport Association (A. T. A.), the industry trade association, is quite weak in its duties and powers when compared with employer associations in comparably large industries. In fact, the position assumed by the A. T. A. in the development of the Mutual Aid Pact was only of minor significance and was limited solely to the early formative stages. As a result, in the past the A. T. A. has not provided any significant encouragement to attempts to seek industry-wide bargaining positions. The summary effect of all of these considerations had generally been one of fostering an indifferent attitude among

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[26] Ibid., p. 23.

[27] 8 C. A. B. 354 (1947).

employers and unions toward the possibility and the desirability of bargaining at the industry level.

Compounding the problems associated with multiple unionism has been another troublesome bargaining characteristic. Until recent years, it has been the "almost universal practice" of the airline unions to insist upon one year contracts.[28] As a result, industrial peace has usually been short-lived. The employers have often received annual demands for wage and rule changes from almost all of the unions with which they bargain. Recently, however, there has been some tendency toward somewhat longer contracts.

The major element causing instability in industrial relations in the industry, however, has been the rapid inroads made by advancing technology. While certainly not peculiar to this industry alone, nevertheless, the difficulties of bargaining in an environment characterized by rapid technological change have been both numerous and onerous. On the employee side, some occupations have been created--as the flight engineers which first appeared in 1948--as the direct result of adjustments in job content through the introduction of new equipment. During the same period, however, jobs like the flight radio officer and the flight navigator have been made obsolete. Similarly, just as the introduction of the DC-6 and the Constellation

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[28]McNatt, op. cit., p. 23.

in 1948 brought the flight engineers into existence, the coming of the jet liners in late 1958 has treatened to eliminate them.[29] The pace and breadth of technological change in the industry has raised many problems for all of the bargaining units. The uncertainty of the future has been further inflamed by the aforementioned presence of multiple unions on the industry level and rival unionism on the job level. As for the employers, the jet age has brought many managerial problems. The switch to jet aircraft has meant extensive capital investment, increased fixed costs, rapid obsolescence of equipment, and--for the first few years after the introduction of the larger and faster jets--unplanned over-capacity. Thus, the need of employers for industrial peace in recent years has probably been without precedent. The likelihood that stable industrial relations could be achieved in the industry, however, has never been dimmer.

As a final consideration, mention should be made of the impact of a strike upon the service provided by the industry. Air passenger service is not an item that can be stockpiled prior to or recouped after a strike. When the service is demanded, it is needed at a particular time.

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[29]Albert A. Blum, "Fourth Man Out--Background of the Flight Engineer-Airline Pilot Conflict," Labor Law Journal, August, 1962, pp. 649-657.

If the service is not available, the would-be-revenue is forever lost. Consequently, air transportation is one industry today in which the strike weapon has retained its full economic effectiveness.

It is within this framework that the Mutual Aid Pact was conceived and put into effect.

## Establishment of the Original Pact

### Origins

As with virtually every aspect of the Pact, even its origin has been the subject of major controversy. The carriers claimed that it was a spontaneous reaction to the union use of a whipsaw tactic in strike against Capital Airlines beginning October 17, 1958. Capital had been one of six carriers that had been engaged in a contract dispute with I. A. M. All six carriers had been joint parties in a single Presidential Emergency Board (Board No. 122) proceeding before the strike.[30] Capital accepted the recommendations of the Board; I. A. M. rejected them. Capital, which was in serious financial difficulties,[31] was struck while all of its competitors continued to operate (including,

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[30]On only two previous occasions since the airline industry was brought under the Railway Labor Act has more than one carrier been a party in a proceeding before an Emergency Board. They were Board No. 36 in 1946 and No. 108 in 1955.

[31]"Joint Exhibits of the Airline Parties," Vol. II C. A. B. Docket 9977 (December 18, 1961), Joint Exhibit A, p. 3. Testimony of Robert J. Wilson, Vice President--Personnel and Properties of Capital Airlines.

of course, the five other carriers involved in the dispute).[32] Thus, the carriers have stated that "the Capital strike was unquestionably the immediate event that inspired the Mutual Aid ageeement."[33]

The unions, on the other hand, argued--in a view later sustained by the Hearing Examiner[34]--that the Pact had many antecedents insofar as attempts to joint action by airline employers to counter union strike actions were concerned.[35] The unions contended that as far back as 1947 the carriers had attempted to establish group bargaining when the Airline Negotiating Conference was established and replaced in 1950 by the Airline Personnel Relations Conference.[36] In the

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[32] Ibid., pp. 1-4; see also "Brief of the Carrier Parties to Examiner S. Thomas Simon," C. A. B. Docket 9977 (November 29, 1962), p. 8.

[33] Ibid., "Brief of the Carrier. . .to Examiner. . .," p. 8; see also, "Joint Exhibits. . .," Vol. II, op. cit., Joint Exhibit A, p. 1.

[34] "Initial Decision of Hearing Examiner S. Thomas Simon," C. A. B. Docket No. 9977 (May 14, 1963), pp. 55-61.

[35] "Brief of the Union Parties to Hearing Examiner S. Thomas Simon in Opposition to Approval of Mutual Aid Pact," C. A. B. Docket No. 9977 (November 29, 1962), pp. 28-33.

[36] The exact original purposes of these organizations are quite "vague" (ibid., pp. 56-57, esp. footnotes 91 and 92). Both organizations served virtually no consequence as bargaining entities. The Airline Negotiating Conference went out of existence shortly after its formation without ever assuming any significant role. The Airline Personnel Relations Conference has served solely as a body for the gathering and disseminating of statistical information relevant to industrial relations matters.

months prior to the actual adoption of the Pact, several other devices had been seriously studied. An official of Trans World, which was about to introduce its jet equipment and was apprehensive about its effects on labor relations, had been working "for a long time" on a proposal which pertained solely to Trans World, Pan American, American, and Eastern. These four carriers were to be the first to use jet equipment. The proposal simply entailed the principle that the operating competitors would pay over to a struck carrier an amount equal to the increased revenue received during the strike period. The exact details were never completed. Another proposal was also under study by officials connected with A. I. A. Their plan also centered upon the soon-to-be jet carriers. The idea involved the possibility of establishing a broad group bargaining plan which sought to avoid the possibility of a selective strike against one carrier by forcing the union to strike all of them. The strike against the group would be forced by having the struck carrier lease its equipment to the remaining carriers that were operating. The pilots on the other lines would, in all likelihood, refuse to fly the equipment and the non-struck carriers would be free either to discharge the pilots or to shut down their operations due to the fact that the pilots had breached the terms of their

contract.[37] In this manner, group bargaining could be attained. The group bargaining plan was, if possible, to be merged with a mutual insurance plan. A special company was to be established by the interested carriers in Nebraska and additional insurance coverage would be sought from Lloyds of London.[38] Thus, the unions claimed that "the original Pact was in fact a step in an overall program of strike insurance and group bargaining by which the carriers were to exert increased pressure on the unions."[39]

Subsequently, the Hearing Examiner held that "the record is clear that the mutual aid principle had been under consideration by the major air carriers for at least a year prior to the execution of the original Pact."[40]

Provisions

The operational principle upon which the original Pact was based can be stated simply--but its actual mechanics

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[37]"Brief of Union Parties . . . Examiner," op. cit., pp. 29-30; also, see "Initial Decision . . . Examiner . . .," op. cit., p. 58, esp. footnote 96.

[38]Ibid., "Brief of Union Parties . . .," p. 30.

[39]Ibid., p. 34.

[40]"Initial Decision . . . Examiner . . ," op. cit., p. 55.

are quite complicated. In the event that a strike occurred against one of the participating carriers involving any one of the three conditions for coverage, then:

> . . . each party will pay over to the party suffering the strike an amount equal to its increased revenues attributable to the strike during the term thereof, less applicable added direct expense.[41]

These payments have subsequently been referred to as "windfall payments."

The three conditions which brought the strike within the scope of the original Pact were:[42]

1. A strike called to enforce union demands in excess of or opposed to the recommendations of a Presidential Emergency Board appointed under section 10 of the Railway Labor Act.

2. A strike called before exhaustion of the pre-strike procedures of the Railway Labor Act.

3. A strike which is "otherwise unlawful."

In an earlier draft of the original version, an official from Trans World suggested two other situations which would have made the Pact applicable.[43] These were strikes for the purpose of compelling the employment of personnel--

1. in excess of the number required by government regulations.

2. with training in skills not required or with greater qualifications than those required by the regulations.

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[41] Agreement Dated October 20, 1958, C.A.B. Docket 9977, p. 3.

[42] Ibid., pp. 2-3.

[43] "Joint Exhibits of the Airline Parties," Vol. I, C.A.B. Docket No. 9977, Joint Exhibit No. 1, p. 4.

These latter two provisions were removed from the final version of the original draft "so that the agreement would be confined to the principal objectives of strengthening the procedures of the Railway Labor Act."[44]

Under the original Pact, the exact procedure for computing the amount of the windfall payment was determined individually by each of the carriers. Commenting on this point, J. Donald Bowers, an executive of United Airlines, stated that "each carrier retained freedom to compute its obligations as it throught best."[45] Thus, each carrier devised its own definitions and its own formula for the purposes of computation. It is important to note that under the windfall payments provisions, the amount to be turned over to the struck competitor is determined by the paying carrier.

The Original Objectives of Management

The carrier members have contended from the beginning that the Pact is a "defensive weapon" which is needed to correct an alleged "imbalance" in bargaining power, in favor of the unions.[46] Essentially, the explicit carrier

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[44] Ibid., p. 5.

[45] "Joint Exhibits . . .," Vol. II, op. cit., Joint Exhibit G, p. 2.

[46] E. g., see "Brief to the Civil Aeronautics Board," C.A.B. Docket No. 9977 (January 5, 1959), pp. 44ff.

arguments are that the airline unions have developed a multitude of collective arrangements for inter-union and intra-union co-operation and concerted action, and that the loss of goodwill, the high post-strike costs associated with resuming normal operations, and the high fixed costs that cannot be reduced in times of shutdowns make the economic burden of a strike against a single carrier extremely severe. Implicit in the early consideration of the Pact was the fear that the introduction of the new and expensive jet aircraft would cause unrest among the unions. A candid statement of the objectives and justifications of the Pact in its early stages was provided in a supplemental brief filed by Trans World with the C.A.B., which states:

> Threatened by strikes, the carriers therefore, sought an arrangement which--consistent with the principle of self help--would enable them if a strike occurred (1) to obtain revenue derived from what should have been their own traffic, (2) to prevent the unjust enrichment of others from their routes and trades, and (3) to minimize the inconvenience to the public.[47]

The Unions' Initial Reaction

The airline unions bitterly assailed every aspect of the plan. A sampling of the earliest union reaction to the original Pact revealed such statements as:

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[47]Supplemental Memorandum on Behalf of T.W.A., C.A.B. Docket No. 9977, pp. 4-5.

> The financial aid agreement . . . would be in our opinion a declaration by the Board of "Open Warfare" upon all unions representing airline employees.[48]
>
> Such an agreement, if allowed to stand, will make nationwide problems of every local labor dispute and will lead to extended bitter unrest as anti-union pressure is resisted by airline employees.[49]
>
> If anyone wished to invent a device for causing labor unrest and instability in the airline industry, they could not have done better than the agreement before the Board.[50]

A tangible indication of the immediate apprehension felt by the unions was their announcement in September, 1959, of the proposed formation of their own mutual alliance. Subsequently, on April 12, 1960, seven airline unions[51] joined together to form the Association of Air transport Unions (A.A.T.U.). It was the avowed purpose of this organization to seek a common contract expiration date for their

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[48]Letter from Mr. James F. Horst, Vice President of the Transport Workers Union, to the Civil Aeronautics Board, November 5, 1958, contained in C.A.B. Docket No. 9977, p. 1.

[49]Letter from Mr. George R. Petty, Jr., President of the Flight Engineers Association, to the Civil Aeronautics Board November 4, 1958, contained in C.A.B. Docket No. 9977, p. 1.

[50]"Objections of the International Association of Machinists," November 14, 1958, contained in C.A.B. Docket No. 9977, p. 8.

[51]The seven unions were the Air Line Pilots Association, the Air Dispatchers Association, the Brotherhood of Railway and Steamship Clerks, the Flight Engineers International Association, the Transport Workers Union, the International Association of Machinists, and the United Automobile Workers. The U.A.W.--which was representing a small bargaining unit connected with Continental Airlines--ceased to represent any carrier employees shortly afterward. As a result, it dropped out of this group and the subsequent proceedings before the C.A.B.

bargaining units and to oppose the continuation of the Mutual Aid Pact by petitioning the C.A.B. for a review of the plan. The fact that such arch rivals as the Air Line Pilots Association and the Flight Engineers International Association and also the International Association of Machinists and the Transport Workers Union would unite into this single body is a good indication of how strongly the unions were opposed to the Pact. Yet despite the fears that drove the unions together, their lack of unity in the past soon reasserted itself. As a result the A.A.T.U. was inactive by November, 1960.

The Coverage Problem

Almost immediately after the adoption and implementation of the original Pact, the carriers realized that the agreement was inadequate. The problem was that the limited terms of coverage of the Pact were also restricting participation by other carriers. It was quickly seen that the more trunk-lines that participated, the more successful the agreement would be.

The other non-Pact competitors were under no obligation to pay over to a struck carrier any windfall payments. Thus, Eastern found several of its direct competitors (Delta, Northeast and National) not in the Pact; United found Western to be a non-participant; and Pan American saw both Northwest and Braniff outside the agreement. Consequently, these

lines in particular began to agitate for an expansion of the membership of the Pact. Eastern, in fact, threatened to pull out of the original Pact unless its competitors could be enticed into joining. In a letter to Robert B. Hawkins, Counsel for Capital Airlines, the President of Eastern wrote:

> Eastern feels very strongly that all the trunk carriers should be parties to the Mutual Aid Program, and we wish to give notice that we will not agree to an extension beyond October 20, 1960, unless the carrier participation is expanded to include Eastern's more direct competitors.[52]

Efforts had been made before to expand the participation from the original six to the other seven trunk-lines. In fact, it was only shortly after the original agreement was signed on October 20, 1958, that overtures were made to the other trunk-lines to join "but none of them signed."[53]

The essential reason that the other seven abstained from jointing was dissatisfaction with the coverage conditions of the original Pact. The non-participants were all the smaller firms in the industry. These carriers believed that the agreement would not benefit them since a condition for the receipt of payments was that a strike be called following the issuance of recommendations by a Presidental

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[52]"Joint Exhibits . . . ," Vol. I, op. cit., Appendix to Joint Exhibit 1, p. 22 (letter dated October 14, 1959).

[53]Ibid., Joint Exhibit 1, p. 7.

Emergency Board. The smaller carriers felt that there was little likelihood that such a Board would be convened if they were struck. Their position was reinforced by the Eisenhower Administration's alleged "policy at that time not to appoint Boards except where a strike would shut down one of the few largest carriers."[54]

Thus, if expanded membership were to be achieved, the coverage terms would have to be broadened. To accomplish this objective, an amendment to the original Pact was required.

## The Amendment of March 22, 1960

### Coverage and Participation

To remedy the coverage restraint which was serving to limit the participation rate, the carriers filed an amendment to the original Pact on March 22, 1960. The amendment added a fourth criterion that would make a member carrier eligible for payments. Specifically, the coverage of the Pact was broadened to include a strike "which has been called in the absence of the establishment of such a board [i.e., a Presidential Emergency Board] and the struck party

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[54]"Brief of the Carrier . . . to Examiner . . .," op. cit., p. 11; their view stemmed from a dispute in which the Administration declined to appoint an Emergency Board to study a threatened strike involving Western Airlines and A. L. P. A. A strike of 108 days ensued.

has in all respects acted in compliance with the Railway Labor Act."[55]

The immediate effect of the new coverage provision was just as the original pact members had hoped. On the same day that the amendment was filed with the C.A.B., Braniff, National, and Northwest officially notified the C.A.B. that they had joined. Shortly afterward, on April 7, 1960, Continental also gave official notice of its membership. Thus, only Delta, Northeast, and Western remained outside the agreement.

The overall effect of the amendment, however, was not merely to provide coverage for smaller firms which would not normally warrant the convening of an Emergency Board. At this stage it meant that any "lawful" or "unlawful" strike against a carrier would bring the Pact into operation. The A.T.A. was somewhat skeptical of the legality of the proposal but, apparently, felt it was worth the risk. In a letter to the President of Pan American, S. G. Tipton, President of A.T.A., stated:

> . . . On the other hand, we have been concerned that an agreement which permitted payment to a struck carrier without regard to circumstances would be criticized by the C.A.B.[56]

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[55]"Initial Decision . . . Examiner . . .," op. cit., Appendix D, p. 139.

[56]"Joint Exhibits . . .," Vol. I, op. cit., Appendix to Joint Exhibit 1, p. 24. Letter dated January 7, 1960.

The stipulation that the struck party must have complied with all of the provisions of the Railway Labor Act, it would seem, was designed to minimize this fear.

Shortcomings of the Amended Pact

Soon after the amendment to broaden the coverage of the Pact to cover an additional circumstance, the Pact members found that the agreement was still not completely satisfactory. The objections were varied but they all came to the same conclusion. Specifically, the windfall payments were not providing adequate protection due to financial and computational limitations.

One of the problems came to light when Continental sustained a small strike which caused it to reduce its service. For the most part, however, its flight schedule was unaffected. Continental requested, nonetheless, that its four competitors tender their windfall payments as required under the Pact.[57] The competitors--American,

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[57]The original Pact and the amended Pact were both silent on this issue as to whether or not windfall payments were payable in partial shutdowns of service. In June, 1960, a strike of Eastern's pilots in Miami, Florida, against "inflight inspection" practices of the Federal Aviation Agency led to a partial shutdown. The strike was classified as "unlawful" under the terms of the Railway Labor Act. The question of the applicability of the Pact to such a situation was sent to arbitration where, subsequently, the arbitrator held that the Pact did cover such circumstances and that windfall payments were required from its competitors (see "Joint Exhibits. . .," Vol. II, op. cit., Joint Exhibit C, p. 7). As an aside, it is of interest to note that Eastern had threatened to withdraw from the Pact if partial shutdowns were not included (see, "Joint Exhibits. . .," Vol. I, Appendix 1, p. 69).

Eastern, and Trans World--replied that they could not discern a significant increase in their passenger revenues that could be attributed to the partial shutdown. Thus, Continental charged that:

> It appeared to us that the mechanics of computing "windfall payments" were such that a carrier our size could easily establish "windfall payments" for which it was obligated as a consequence of a strike on a large carrier, but, on the other hand, the large carrier could find it very difficult to identify "windfall payments" which it had obtained as a result of a strike on an airline our size.[58]

Soon afterward Continental served notice that it intended to withdraw as of December 31, 1961.

A second source of discontent was voiced by Pan American. Their complaint stemmed from the fact that most of its competition was with foreign airlines who were not included in the Pact. Thus, Pan American found itself obligated to pay out funds to its few domestic competitors but seldom receiving funds since most of its competitors were other international carriers. Accordingly, the airline complained that it was on a "one-way street." Similarly, a memorandum written by an official of American Airlines on this topic commented:

> Actually, the present formula simply does not apply to Pan American in event of their being struck. . . . In other words, it is a bit unrealistic to have ever included them in a mutual aid pact with the domestic carriers.[59]

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[58] Transcript of Hearings before Examiner, March 1, 1962, Vol. 4, pp. 390-391.

[59] "Joint Exhibits. . .," Vol. I, op. cit., Appendix to Joint Exhibit 1, p. 59 (memorandum dated October 10, 1960).

Braniff, Northwest, and Trans World were also concerned with the problem. Yet in comparison with Pan American, the other three had many more domestic routes and were affected to a much lesser degree by the issue.

The third cause of dissatisfaction was that several of the domestic carriers still did not find their chief competitors in the Pact. Thus, they reiterated their earlier complaint that they were on the "short end" of the balance sheet when it came to a comparison between amounts received and amounts paid out. Eastern still found Delta, Northeast, and--as of December 31, 1961--National[60] to be non-Pact members. United still saw Western outside the terms of the agreement.

A fourth insufficiency, which was of a conjectural nature, gave rise to the concern of some parties. It was quite conceivable that the competitors of a struck carrier could normally be operating at full or nearly full capacity at the time of the strike. Consequently, little, if any, windfall payments would be forthcoming.

Thus, the stage was set for another important amendment.

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[60] As of this date, National withdrew from the Pact; infra, p. 44.

## The Amendment of March 26, 1962

### Early Stages of the Proposal

The carriers had actually begun inquiries into possible method of increasing the payments at least as far back as 1960. In a letter of April 11, 1960, S. G. Tipton, President of A. T. A., wrote to the member carriers the following:

> It was the consensus of opinion among the initial signatories to the Mutual Aid Pact that it should be supplemented by an insurance type arrangement. I was requested to investigate the feasibility of such a program. Enclosed is a memorandum outlining our investigation and recommendation.[61]

In this memorandum, three alternative proposals were set forth. The first suggestion was to adopt a strike insurance program based almost entirely on the program that had been devised by the railroad industry and in operation since September, 1959.[62] The second proposal was called "an interline agreement with fixed benefits." Under this proposal--which is a modification of the railroad program--each airline would determine its minimum daily expense (called its daily indemnity) and these would be summed to obtain the total daily indemnity for all of the participating carriers. The ratio of the two figures thus obtained would indicate the proportionate amount of payment which every carrier would be liable to pay to the struck

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[61] "Joint Exhibits. . .," Vol. I Appendix to Joint Exhibit 1, p. 39; the memorandum is contained in this exhibit on pp. 40-46.

[62] Infra, see Chapter II

carrier per day. Each Pact member would estimate the amount of windfall payments he would receive and, accordingly, would insure for an amount needed in excess of that amount to cover minimum expenses while on strike. In other words, a Pact member would receive a windfall payment from his direct competitors plus a supplemental payment from all of the other participating lines. Carriers who were not Pact members could insure for the full amount of expected minimum daily expenses. Since the amount applied for by each carrier determines the ratio of its liability payments to support other carriers, it was felt that there was a built-in check against over-insurance.

The third proposal was called "an interline agreement with variable benefits." Under this suggestion, each Pact member would guarantee that no party receive benefits from the Pact of more or less than a stated percentage (25%) of its normal operating expenses during the period of the strike. If the normal windfall payment exceeded this percentage, the excess amount would be paid into a fund; if the windfall payment was less than the percentage, first recourse would be to the fund, and, if it was inadequate then assessments based upon the proportion of gross air transport revenue of the Pact members that each airline in the Pact accounted for would be made. A percentage limit of the size of the total amount of assessment to be made against any carrier for one year would be set.

Replying to Mr. Tipton's inquiry, most of the carriers favored the third proposal.[63] United Airlines, however, strongly dissented and charged that the amendment "attempts to design the Mutual Aid so that it will encourage industry-wide bargaining."[64] United felt that if a carrier received more than a stated percentage of its operating expenses, it was entitled to the excess since this occurrence would constitute prima facie evidence that its competitors had actually benefited from the shutdown of the struck carrier. The idea of putting this excess into a fund "that can be used later by all of the carriers" was in opposition to the "philosophy" of the Mutual Aid concept. Similarly, if a carrier did not receive the stated percentage, it would only indicate that the carrier did not have sufficient competition from Pact members to warrant payments and, consequently, it too would be a departure from the Mutual Aid concept to ask other carriers to make up the difference. Reluctantly, United stated that if there really was a necessity for an amendment of this nature, a minimum should be set--less than the 25% originally suggested--which the other members would guarantee;

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[63]"Joint Exhibits, . .," Vol. I, op. cit., Appendix to Joint Exhibit 1, p. 47.

[64]Ibid., p. 53.

but, in the case of the airline receiving an amount above this figure, the carrier should be entitled to keep all of such excesses.

As a result of the objections by United and an expressed lack of interest at that time by American and National, these early plans for revision were shelved. By 1962, however, the issue was again important for the four reasons cited earlier. On March 22, 1962, the member carriers executed a new amendment to the Pact. In accordance with C. A. B. regulations, the amendment was filed with the Board on March 26, 1962.

The Amendment

The amendment concerning payment provisions which was finally agreed upon was a combination of the earlier third proposal (calling for guaranteed coverage of a certain percentage of an airline's losses), and a modification of United's suggestions. Under the adopted amendment, a member of the Pact will receive an amount equal to at least twenty-five per cent of its "normal air transport operating expense" (called the "standard amount")[65] for the operations that are shut down. Thus, to the extent

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[65]"Normal Air transport operating expenses" for each day for any operation is defined as its average daily air transport operating expenses for such operations includable in Accounts 5100-7000 under the C.A.B.'s Uniform System of Accounts and Reports for Twelve months of full operation immediately prior to the month in which the strike began.

that windfall payments made by the direct competitors of a struck carrier fail to meet the standard amount, additional supplemental payments will be made by all of the Pact members. These payments will be based upon the proportion between their "air transport operating revenues" for the preceding calendar year and the total air transport revenues for the participating carriers. A limitation of one-half of one per cent (.5%) of air transport operating revenue for the previous year is established as the maximum annual liability of such payments by each carrier. In the event that the liability restraint is realized before one or more carriers has received its 25%, provision is made for a proportional re-distribution of the supplemental payments among all of the struck carriers in that year. On the other hand, if the windfall payment should equal or exceed the standard amount, no supplemental payments will be made and the struck carrier can retain all such excess amounts.

Under the supplemental payments concept, the initiative rests with the struck carrier--or receiving carrier--to compute the amount to which it is entitled beyond the windfall amount. The struck carrier then notifies the other carriers of their obligations.[66]

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[66]Note that under the supplemental payments it is the struck carrier that determines the amount to which it believes it is entitled; under the windfall payments, the non-struck carrier decides the amount that it will pay to the struck carrier.

As a sidelight, Continental rejoined the Pact when the supplemental payments provision became effective. Continental believed that in the event of a strike, it would now be entitled to payments regardless of the difficulties it would still encounter with respect to the windfall payments concept.

## Enlarged Coverage

In order to close an alleged loophole, an addition to the coverage conditions of the Pact was also made at this time. A fifth criterion was added which would make a Pact member eligible to receive payments in the event that an Emergency Board should be convened but failed to make recommendations for settlement.

## The Computation Memorandum

### The Problem

Since the supplemental payment is actually a residual difference between the standard amount and the windfall payment, it is apparent that one of the most important and troublesome aspects of the past has been how the windfall payments are computed. The difficulty is that while it is quite easy to state the principle involved, the actual computation itself is extremely complex. As one carrier stated when the Pact was begun, "in a field as dynamic as

the air transport industry it must be recognized that no simple formula can be applicable under all circumstances."[67]

For the first five years of the Pact, each carrier determined its own method of computation. The lack of uniformity in procedures was bound to lead to internal difficulties. The issue came to a head following a strike against National in May, 1961. The cause of the dissatisfaction arose "over the manner and methods pursued by Eastern in the implementation of their obligation under the Mutual Aid Pact."[68] National believed that Eastern's payment "was very much less than it should have been "[69] National was so incensed that it withdrew from membership in the Pact as of December 31, 1961.

A further stimulus, if one were needed, for the establishment of a formal and uniform procedure was provided in the hearings over the legality of the Pact. Agreeing with the recommendation of the Bureau of Economic Regulation of the C. A. B. (the Bureau), the initial decision given by the Hearing Examiner stated that the carriers should formalize a single procedure. The Examiner, however, did not set a specific deadline for the plan to be completed.

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[67]"Procedure for Computing American Airlines Payments to a Struck Carrier (s) Under an Agreement Among Certain Carriers dated October 20, 1958," C. A. B. Docket No. 9977, p. 2.

[68]"Transcript . . .," op. cit., p. 42[illegible].

[69]Ibid.

The Memorandum

Given these pressures, the carriers filed a memorandum on October 29, 1963, stating that "all of the carrier parties have now adopted an identical statement of procedure for computing payments under the agreement."[70] In a twelve page appendix to the memorandum an outline of a single formula to compute windfall payments was established.

Without going into the lengthy and specific provisions of the formula, several of its essential features should be stated. First, with regard to the computation of increased revenues by the paying carrier, five basic steps are involved:[71]

1. Determination of the segments of the paying carrier that are competitive.

2. Selection of a representative base period [usually the three week period prior to the commencement of the strike] in the interval preceding the strike for measuring traffic carried by the paying carrier over competitive and noncompetitive segments.

3. Measurement of the actual daily volume of traffic of the paying carrier over competitive and noncompetitive segments during the base period and during the term of the strike.

4. Computation of the excess of traffic actually carried by the paying carrier during the period of the strike above the "normal" traffic volume that it could reasonably have expected in the absence of the strike.

5. Conversion of the excess traffic into increased revenues attributable to the strike.

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[70]"Memorandum of the Carrier Parties," C. A. B. Docket No. 9977, October 29, 1963, p. 2.

[71]Ibid., p. 1 of Appendix A.

Thus, the formula--while representing a point of common departure for all of the participants--still, of necessity, must leave an element of latitude to each carrier to compute its actual windfall payment.

Having calculated the excess revenue attributable to the strike of a competitor, the next step is to compute the added direct expense which is to be deducted from the revenue figure. To ascertain these costs, "it is necessary to examine the various types of expenses to determine those that result in added direct expense due to additional flying hours and those caused by added traffic volume."[72] Again, it is necessary to establish a base period (which is the calendar quarter during which the windfall payment is made) from which the unit costs are determined. The units which are measured fall into the following four categories:[73]

1. The costs of flying the airplane, measured by wheel-off to wheel-on hours.

2. The costs of handling the airplane on the ground measured by number of departures.

3. The costs of handling passengers while in flight, measured by passenger miles flown.

4. The costs of handling passengers or cargo on the ground, measured by passengers carried or cargo tons lifted.

In addition to the above stated traffic production costs, it is necessary to determine the additional administrative and

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[72] Ibid., p. 6 of Appendix A. [73] Ibid.

general costs which are incurred by the paying carrier. Provision is also made for adjustments due to special circumstances by the individual carrier when and if they should be necessary.

## Challenge to the Legality of the Pact

### The Initial Approval by the C. A. B.

As mentioned earlier, the original Pact was given approval by the C. A. B. on May 20, 1959, and through the denial of a union-sponsored petition for reconsideration on October 19, 1959. The 4-1 majority opinion found no violation of the provisions of the Railway Labor Act inherent in the provisions of the Pact. The decision, however, was made without the benefit of an evidentiary hearing.

### The Decision to Review the Pact

On April 12, 1960, the six major unions in the industry and the A. A. T. U. filed a long list of objections to the agreement. The unions, in their brief, requested the Board either to disapprove the amended Pact or to conduct a full evidentiary hearing on the questions posed by the Pact.

Consequently, on June 20, 1960, the C. A. B. reconsidered its earlier stand and ordered a thorough investigation of the Pact. Several factors contributed to this decision. The Pact had been in operation for eighteen

months and facts concerning its operation were now available. In addition, participation in the Pact had been increased to the point in which it included nine of the then twelve domestic trunk-line carriers and a major U. S. international carrier. The membership, accordingly, accounted for over ninety per cent of the revenue passenger miles flown in the industry. Also, the coverage conditions had expanded so as to include virtually every strike in which a carrier had complied with the Railway Labor Act. Thus, holding that conditions had changed since its original approval, the C. A. B. decided that "the principle of mutual assistance among air carriers had emerged as a long-term policy with implication of great impact on labor-management relations and the public interest."[74]

The Proceedings Before the Hearing Examiner

From the date of the order to begin an investigation until the date that the Hearing Examiner made his decision, a period of almost three years elapsed. During that time, a lengthy and detailed public record was established.

Basically, the union parties have argued that the Pact has tended to spread strikes, to lenghten strikes, to force the development of counter devices, and to create a hostile

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[74]"Initial Decision. . . Examiner . . .," op. cit., p. 3.

environemnt for the conduct of collective bargaining. For these reasons, "among other things," the unions have asserted that Pact has tended to defeat the purposes of the Railway Labor Act. Accordingly, if the Pact violates the intent of the Railway Labor Act,[75] it must be harmful to the public interest and, therefore, be in violation of the provisions of the Federal Aviation Act. On this ground, the unions have asked that the entire Pact be struck down.

The Bureau has tended to take a middle-of the-road approach. In essence, the position of the Bureau has been that of approving the windfall payments but opposing the supplemental payments amendment. The Bureau would approve the windfall payments concept subject to a single limitation: that such payments to a struck carrier should not exceed the difference between the actual fixed costs incurred during a strike and earned revenues from other sources.

As to the supplemental payments, the Bureau has been adamant in its opposition. It has stated that with the inclusion of the supplemental payments provision, "the Pact is no longer a defensive weapon."[76] In a brief to the

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[75]In the original approval to the Pact given by the C. A. B., the Board held that the Pact did not violate specific sections of the Railway Labor Act. Thus, in all subsequent proceedings, the unions confined their legal attack to the broader issue concerning a violation of the "intended purposes" of the Act.

[76]"Brief of the Bureau of Economic Regulations to the Board," C. A. B. Docket No. 9977 (October 10, 1963), p. 7.

Examiner, the Bureau clearly outlined its position:

> The Bureau's chief objection to the Pact as presently written is that it obligates carriers who may not compete with a struck airline and who may have no direct interest in the labor problems to make substantial payments to the struck carrier even though the paying carrier receives no direct benefits from the strike . . .
>
> Supplemental payments must be made regardless of the paying carrier's profit position. . . . We do not think it would be in the public interest for the board to approve a carrier's management, in effect, delegating to another the right to commit the former to substantial and onerous obligations, especially when this must be done without policy guidance, consultation, or review.[77]

From a legal standpoint, the position of the Bureau has rested upon the contention that the supplemental payments amendment is inconsistent with the public interest objectives of the Federal Aviation Act. The Bureau argued that the danger stemmed from the "tendencies" and "risk" to the public interest that the concept would be inclined to evoke. The Bureau's criticism was based on the belief that the supplemental benefits amendment would seriously disrupt labor-management "harmony and stability" and that it would force Pact members "to choose between a surrender of corporate sovereignty and violation of the Railway Labor Act."[78] The logic of the argument concerning the latter

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[77]"Statement of Position of the Bureau of Economic Regulation," C. A. B. Docket 9977 (August 13, 1962), pp. 2-3.

[78]"Reply Brief of the Bureau of Economic Regulation to Examiner S. Thomas Simon, "C. A. B. Dockett 9977 (January 18, 1963), p. 2.

point it as follows: since every Pact member is obligated to pay a portion of the supplemental benefits due a struck carrier, the members will, as a matter of fiscal integrity, encourage common positions on major labor-management issues. Recalcitrant positions would be, by implication, frowned upon. Thus, the Bureau contended, impetus would be provided for unilaterial group bargaining, which would be a violation of the interpretation given to the Railway Labor Act.[79]

The carriers have replied to the above charges by contending that both the windfall payments and the supplemental payments serve to further the public interest. The carrier position is based upon two major contentions. First, the carriers stated that it was their belief that the Pact encouraged peaceful settlements by requiring employer adherence to the procedures of the Railway Labor Act before they would be entitled to benefits. Secondly, the likelihood of frequent strikes--especially "unlawful" strikes under the Act--is diminished. Since the unions are aware that a strike would make the Pact applicable, the reduced or "neutralized" economic impact of the strike weapon should mean less reliance upon the strike and more incentive for serious bargaining.[80]

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[79] Ibid., pp. 5-6.

[80] "Brief of the Carrier . . . Examiner . . .," op. cit., pp. 36ff.

## The Initial Decision of the Hearing Examiner

On May 14, 1963, Hearing Examiner S. Thomas Simon rendered his decision on the compatibility of the Mutual Aid Pact with the protection of the public interest. With the exception of a few minor points, the decision rejected all of the arguments of both the union parties and the Bureau. In upholding the validity of the entire Pact, the Examiner held that the agreement was merely another economic weapon. Accordingly, the C. A. B. should not attempt to regulate these economic devices because such action would restrict the ability of a party to bargain effectively. With respect especially to the economic devices used by the carriers, the Examiner stated that restraint from intervention is justified since:

> The government's traditional passive role in the collective bargaining process is particularly applicable to the Board since, under the Act, its authority over labor-management relations in the air transport industry is incomplete, being limited to the regulation of only one party, the carrier.[81]

In his decision, the Examiner found that the primary objective of the Pact was "a reduction in the number of strikes with the consequent losses to the Pact members as a group."[82] Hence, this objective became his criterion for determining the "effectiveness of the Pact." Reviewing the

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[81] "Initial Decision . . . Examiner . . .," op. cit., pp. 92-93.

[82] Ibid., p. 97.

strike history of the trunk-line carriers since the inception of the Pact, he found that there has been only one strike which involves purely economic issues. The Examiner stated that the Pact members and non-members "have been almost continuously involved in labor disputes which have had their roots in a jurisdictional representation controversy between two major air transport unions representing flight crew members."[83] In the decision, the Examiner denied the carriers' charge of an existing "imbalance" of economic power in favor of the unions and indicated that carriers were not "helpless" and "could have weathered their labor difficulties without catastrophic results in the absence of mutual assistance."[84] Nevertheless, in a statement that seems partially contradictory, he approved the Pact on the grounds that:

> . . . The record developed by the carriers relating to the financial vulnerability of a carrier to a strike, as well as the evidence of unrestrained use of strike power by the unions in the crew complement controversy, is a justification for the adoption of the mutual assistance principle as an economic weapon for use in the collective bargaining process.[85]

Brushing aside the Bureau's contention that the supplemental payments section could have dire effects upon labor-management relations as being "suppositional" and as "inchoate inferences," the Examiner stated that he was "of the

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[83] Ibid., p. 101. [84] Ibid., p. 120

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

opinion that the Pact has had little or no recognizable authority upon the course which labor relations has taken during this period."[86] Accordingly, he concluded that "there is no substantial evidence in the record that the Pact has had any material effect upon the collective bargaining process in the industry."[87]

The Appeal for a Review the Decision of the Examiner

On July 11, 1963, the C. A. B. exercised its right of discretionary review of the initial decision of the Examiner. The union parties and the Bureau had both filed petitions requesting review; the carriers opposed the move. The case was argued before the C. A. B. on October 23, 1963.

In their respective briefs to the Board, the position of the parties remain essentially the same as before. The carriers laid stronger emphasis upon the jurisdictional difficulties in the industry than they had in their earlier positions. The unions again sought a total condemnation of the plan. The Bureau requested only to have the supplemental payments provision struck from the Pact.

The Decision of the C. A. B.

On July 10, 1964, the C. A. B. issued its decision on the legality of the Pact. A majority (Chairman Allen S. Boyd,

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[86] Ibid., p. 118

[87] Ibid., p. 119.

Chan Gurney, and Whitney Gillilland) voted to approve the Pact. Their decision, however, was not unequivocal. A three year trial period--until July 10, 1967--was established. After that time period a final decision will be rendered.

The majority was in complete agreement with the decision of the Examiner that the Pact is consistent with the "public interest provisions of the Federal Aviation Act."[88] Moreover, they stated:

> Air carriers are particularly vulnerable to strikes, and the industry has, in the recent past, been plagued by strikes. The Pact offers, at a not unreasonable cost for the protection obtained, a substantial measure of relief against the costs of strikes, in this fashion and to this extent contributing to industrial stability.[89]

Nonetheless, the majority was hesitant to state without reservation that the Pact has not contributed to the general "deterioration of labor-management relations" during recent years. For this reason, the time limitation to their approval was made. The majority stated:

> The years since the creation of the Pact have not been typical either as to the industry, plagued with a capacity problem, or labor-management relations, pre-occupied with the crew complement issue, and for this reason we shall limit approval to a period of three years.[90]

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[88]"Opinion of the Board," C. A. B. Docket No. 9977, Order E-21044 (July 10, 1964), p. 4.

[89]Ibid., p. 5.

[90]Ibid., p. 8.

Robert T. Murphy concurred in part with the majority and dissented in part. His position is in accord with that of the Bureau. In other words, he approved of the windfall payments aspect of the Pact but opposed the supplemental payments provision. With respect to the supplemental payments provision, Murphy concluded:

> Moreover, this part of the Pact could subject a great deal of the rightfully earned revenues of a carrier with stable labor relations to transfer to a struck carrier whose labor policy may be neither prudent or fair. This tax on earnings could distort the true financial picture of the industry as well as lead to the involvement of member airlines in the management policies of one another. Thus, a carrier could well be encouraged by the great imbalance in labor relations created by this provision to take an unreasonable position on a strike or strike threat, not only for its own advantage, but to present an industry position.[91]

Fearing that the supplemental payments provision would encourage "involuntary joint bargaining" under "the guise of single carrier negotiation" and that this provision will encourage the unions to develop counterbalancing machinery, Murphy objected vigorously to this portion of the Pact.

Board Member G. Joseph Minetti dissented completely from the opinion of the majority. Just as he had held in the original opinion of the Board in 1959, Minetti disapproved of the Pact "in its entirety."[92] Indicating that there is common agreement by all members of the Board that labor relations "have shown significant deterioration during

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[91] Ibid., p. 2 (of opinion by Vice Chairman Murphy).

[92] Ibid., p. 1 (of opinion by Member Minetti).

the period the Pact has been in effect,"[93] Mr. Minetti states that the unions regard the Pact as a direct attack. Hence, the basis upon which his dissent rests is made clear by the following statement:

> The important thing is that the Pact has created and nurtured a spirit of distrust that is destructive of the mutual confidence and respect which is essential to the successful negotiation and solution of problems in the emotionally charged atmosphere of labor-management relations.[94]

A Note on Antitrust Implications

Before concluding this section on legal considerations, it is of interest to note that at no point have the antitrust laws played any meaningful role in the litigation. Aside from the removal of the referral clause, neither the unions or the Bureau has challenged the Pact on this basis. Similarly, in the decision of the Examiner, he stated:

> The examiner finds that the Pact has not operated in restraint of trade or lessened competition between carriers or between air carriers and other carriers and that the agreement *per se* does not contravene the policy or principles of the antitrust laws.[95]

Immunity from the antitrust laws can be extended by the C. A. B. if it holds that the agreement is motivated by business requirements and not by the intent to monopolize.

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[93] *Ibid.*, pp. 2-3.

[94] *Ibid.*, p. 4.

[95] "Initial Decision . . . Examiner . . .," *op. cit.*, p. 27.

In a letter filed with the C. A. B. shortly after the original Pact was adopted, the position of the Department of Justice was made clear;

> If the Board approves this agreement pursuant to Sec. 412, however, the parties are relived, insofar as may be necessary to enable them to carry out its terms from the operation of the antitrust laws (sec. 414). Since the Board must weigh competitive factors before approval is granted, antitrust immunity results . . .[96]

## An Evaluation of the Effectiveness of the Pact in Meeting the Objectives of the Carriers

### Operations

A comparison of the total windfall payments and windfall receipts of the participating carriers through December 31, 1962 is presented in Table 1. The Table indicates the actual magnitude of the windfall payments portion of the Pact--totaling over $22 million in its first fifty months. The Table also shows the breadth of the gap between the payments and the receipts of some carriers. Pan American and United have paid out far more than they have received; Eastern, and Northwest have had the reverse experience.

Table 2 is a breakdown of the total supplemental payments paid out and received since the introduction of

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[96] Letter from Mr. Victor R. Hansen, Assistant Attorney General, Antitrust Division, Department of Justice, to the Civil Aeronautics Board (December 30, 1958), Washington, D. C. [Contained in C. A. B. Docket 9977.]

TABLE 1.--Summary of Windfall Payments Under Mutual Aid Pact.[a]
(October 1958 - December 31, 1962)
Thousands)

| Received by | Total Received | PAID BY | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | AAL | BAL | CAP | CAL | EAL | NAL | NWA | PAA | TWA | UAL |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| American | $ 4,431 | $ - | $169 | $ 353 | $41 | $ - | $ - | $ - | $ - | $1,260 | $ 2,608 |
| Braniff | -* | - | - | - | - | -* | - | - | - | - | - |
| Capital | 2,620 | 908 | - | - | - | 301 | - | - | - | 419 | 992 |
| Continental | - | - | - | - | - | - | - | - | - | - | - |
| Eastern | 8,278 | 1,367 | 184 | 714 | 2 | - | 411 | 424 | 1,351 | 352 | 3,474 |
| National | 107 | 4 | 1 | 26 | - | 74 | - | - | - | 1 | 1 |
| Northwest | 3,501 | 177 | - | 796 | - | 115 | - | - | 650 | 43 | 1,820 |
| Pan American | 121 | - | 7 | - | - | - | - | - | - | - | 114 |
| Trans World | 3,071 | 727 | 25 | 195 | 44 | 1 | - | - | 319 | - | 1,760 |
| United | - | - | - | - | - | - | - | - | - | - | -- |
| Total Paid | $22,229 | $3,183 | $386 | $2,084 | $87 | $491 | $411 | $424 | $2,320 | $2,075 | $10,769 |

*Payment was less than $500.

[a]Source: "Initial Decision of HEARING EXAMINER," May 14, 1963
Appendix G, p. 150 and Appendix H, p. 151.

TABLE 2.--Summary of Supplemental Payments Under Mutual Aid[a]
(October, 1963)
(Thousands)

| Carrier | Amount Paid | Amount Received |
|---|---|---|
| American | 1,061 | - |
| Braniff | 118 | - |
| Continental | - | - |
| Eastern | - | 6,069 |
| Northwest | 308 | - |
| Pan American | 1,023 | - |
| Trans World | 169 | - |
| United | 3,391 | - |
| Total | 6,070* | 6,069* |

[a]Source: "Initial Decision of Hearing Examiner," May 14, 1963 Appendix H, p. 151; there were no "supplemental payments" made between May - October, 1963.

* These figures do not balance exactly due to rounding on my part and due to slight differences between the original figures of the paying carriers and those of the receiving carrier.

the concept. It has been employed only once--in the June, 1962, strike against Eastern by the Flight Engineers. In that case, Eastern received $16,014, 517 in total mutual aid with $9,945,307 representing windfall payments and $6,069,210 representing supplemental payments. In other words, supplemental payments accounted for over one-third of the total aid received from the Pact.

Participation

Currently four of the existing eleven trunk-line carriers remain outside the Pact. Delta, Northeast, and Western have never shown any interest in joining the agreement. National, the largest of the non-participants, became embittered as a Pact member and withdrew. Due to a provision contained in the amended Pact of March 26, 1962, National cannot rejoin the Pact without making the net payments to the Pact members that it would have owed had it not withdrawn. As a result, it would appear unlikely that any of the four will join the Pact in the foreseeable future. As a result the effectiveness of the windfall payments will be diminished to the degree that would-be passengers of a struck carrier decide to use the facilities of the available non-participants. The effect of non-participants reducing the windfall payments is now, however, somewhat mitigated by the operation of the supplemental payments amendment.

Coverage

The amended Pact is currently applicable to virtually every strike situation. Only two strike circumstances would appear not to be covered--namely:

1. if a carrier member violates the terms of the Railway Labor Act;

2. if union demands are equal to or less than the recommendations of a duly convened Emergency Board and the carrier refuses to accept the union's demand.

The supplemental payments concept now assumes that every participant can recoup at least twenty-five per cent of its normal air transport expense for the operations that are shut down during a strike. Should the windfall payment exceed this twenty-five per cent figure, the struck line would receive the additional amount. Hence, whether a struck Pact member should find one or more of his direct competitors--domestic or foreign--to be non-participants is no longer of paramount importance. Each struck member is guaranteed the standard amount. While those lines that still find several of their direct competitors outside the Pact may be envious of those carriers that may recoup an amount that exceeds the standard amount, the supplemental payments provision seems to have ameliorated the complaints on this issue. Currently, there is no indication of any dissatisfaction by any members on this point.

Liabilities

On the liability side, the amended Pact does mean that all members assume a financial obligation whenever a fellow member is struck. Such added involvement in each other's affairs may well be the source of heated controversy in the future between the members. One such instance has already occurred. At the 1963 annual meeting of the stockholders of United Air Lines, the President of the Corporation voiced strong objections to the operation of the Pact. The Wall Street Journal reported as follows:

> W. A. Patterson, President of United Air Lines, said he will recommend to United's directors that the company withdraw from the industry's mutual aid strike insurance program.
>
> Mr. Patterson told the annual meeting that the mutual aid plan had been a big disappointment to United. He noted that an individual line may withdraw from the program on any December 31 providing it serves notice at least 60 days in advance.
>
> After the meeting . . . Mr. Patterson said he didn't object to a mutual aid program in itself. "But, on the other hand, when you see the (labor relations) policies of some carriers so opposed to your own, then it's time to take action to protect your interests."
>
> Mr. Patterson added that he had "seen one or two strikes over issues where United had already peacefully solved the problem," and termed the strikes "senseless."[97]

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[97] "United Air Head Opposes Mutual Aid Strike Plan," Wall Street Journal (April 26, 1963), p. 8; see also "Patterson Favors U. A. L. Withdrawal from Strike Pact," Aviation Daily, Vol. 145 (April 29, 1963), p. 371.

United had paid the most into the Pact and had yet to collect a single cent. As the date for notification of intent to withdraw approached (i.e., November 1, 1963), it became apparent that United had reconsidered its position. Instrumental in this reconsideration, undoubtedly, was the fact that United became a party to a major unresolved dispute with the I. A. M. which, on October 9, 1963, resulted in the establishment of a Presidential Emergency Board.[98]

With respect to the actual degree of financial involvement that each carrier assumes in the labor policies of another firm, the counsel for the carriers defended the supplemental payments liability as being a sound business practice. He stated:

> . . .Now, finally, it should be observed that there is a maximum limitation on each carrier's obligation to pay. But in return, it has a very much larger right to receive if need arises.
>
> Management can hardly be held irresponsible or unwise for entering into such an agreement any more than it would be held irresponsible for incurring the expense of convenient insurance in a great variety of circumstances.[99]

The "In and Out" Problem

Membership in the Pact has been in the past the source of frequent problems. Eastern, Pan American, and United

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[98]The dispute was subsequently settled without a strike on December 18, 1963.

[99]Transcript of Oral Arguments before the Board, C. A. B. Docket No. 9977, pp. 20-21.

have at various times threatened to leave the Pact; Continental withdrew only to rejoin three months later; and National pulled out entirely. In order to stabilize the participation in the Pact and to prevent a carrier from joining the Pact when it was advantageous and leaving when it appeared to be detrimental, a section pertinent to this subject was included in the amendments of March, 1962. Withdrawal from the Pact is permitted from year to year as of December 31 with 60 days' prior notice. But the withdrawing carrier will remain liable for all payments under the agreement for a period of one year thereafter. As to joining the Pact, six months prior notice is required of any applicant who has not been a member before. As for a carrier who was a member once and who seeks readmittance, the carrier can rejoin only by making the net payments that it would have been required to make had it not withdrawn.

## Comments

The approval of the Pact by the C. A. B. will not significantly alter the industrial relations environment in the industry. The true source of the turmoil of the recent years has sprung from a commingling of several forces. The Pact itself assumes importance not as a cause but, rather, as a result of these disruptive factors. The most dominant of these considerations is the presence of

multi-unionism and of rival unionism. The perpetuation of such labor market characteristics can only mean that short term contracts and bitter union competition will continue to be the rule. Moreover, multiple unionisn has greatly increased the exposure of the industry to strikes. The more unions in an industry, the greater the number of contracts, negotiations, contract expiration dates, and strike threats. Hence the more likely it is that a strike may be precipitated. The crew complement controversy that has affected many carriers on numerous occasions during the past six years provides an excellent example of this contention. Likewise, the uncertainty of the airline unions about the future role that advancing technology is to assume in the industry has in recent years been compounded by the miscalculations by management in general concerning the potential demand for the services of the industry. As a result, the unions have developed a feeling of apprehension and distrust of both the decision-making capacity and objectives of management. All-in-all, it has been these institutional barriers to compatibility that have been the true causes of the unrest in the past.

It is unlikely that the Pact itself will contribute to an increase in the number of strikes in the industry. The pre-strike importance of the Pact seems to be of minor consequence. The true significance of the Pact will be revealed only after a strike has begun. When shut downs do

occur, they will undoubtedly tend to last longer and to generate increased bitterness. The Bureau has contended that it is the supplemental payments feature of the Pact that will cause these undesirable results. Actually, it would seem that both the windfall payments and the supplemental payments would have similar effects. It is doubtful that a deletion of the supplemental payments would materially alter the attitudes of a union facing a strike with a Pact member who must rely solely upon windfall payments. Similarly, whether a strike will be longer as a result of the carrier receiving both supplemental payments and windfall payments would depend entirely upon the particular carrier involved. It may be that the windfall payments could exceed the standard amount in which case the supplemental payments would not even be involved. Conversely, it could be that the revenue received by a member carrier--like Continental--might be entirely made up of supplemental payments. What then is the difference in the outcomes of the two situations? It is not the type of payment that is crucial to the determination of union attitudes on the length of strikes but, rather, the presence of the payments themselves regardless of their derivation that affects such matters. In any event, the acceptance of free collective bargaining as the desired method of resolving industrial disputes in our nation is premised upon the use of private economic weapons. It is difficult to imagine

any type of such weaponry that would not, by definition, have such effects as are inherent in the Pact.

The most important justification cited by the Bureau and in the dissenting opinion of Vice Chairman Murphy in their attacks upon the supplemental payments concept centers upon the possibility of a violation of the Railway Labor Act. The violation--the unilateral establishment of multi-unit bargaining--is not, however, one of an explicit provision of the Act. Nowhere in the Act is there a mention either in support of or in opposition to multi-unit or industry-wide bargaining. The prohibition stems directly from an administrative interpretation given to the Act by the C. A. B.[100] The opinion of the C. A. B. is based upon the allegation that such bargaining could lead to industry-wide shut downs which would violate the public interest section of the Federal Aviation Act which the C. A. B. is directed to protect. Such a position does not seem tenable. If both the unions and the carriers voluntarily agree to bargain on an industry-wide basis, it would be quite legal under the C. A. B.'s interpretation of the Act. How can the Board then claim that it is against the public interest if the parties are indirectly led to industry-wide bargaining, but that it is acceptable if they voluntarily agree to such a development? The potentiality

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[100]8 C. A. B. 354 (1947).

for a shut down of the entire industry is the same in either case.

In many respects, industry-wide bargaining might conceivably contribute to industrial peace. Instead of witnessing a multitude of battles over the same issue--as the pilot-flight engineers controversy--the problems could be resolved once and for all time. It is extremely unlikely that the unions would ever resort to an industry-wide strike. The airline unions are currently in the position of the railroad unions. Both know that a shut down of the entire industry could only lead to immediate federal intervention. While both industries are exempt from the national emergency provisions of the Taft-Hartley Act, the experience of the summer of 1963 in which the looming spectre of a nation-wide rail strike led Congress to pass the first peace-time compulsory arbitration law should eliminate this device from the arsenal of useful union strike tactics.

In many industries, multi-unit bargaining has proven quite successful. In the airline industry, however, its evolution has been virtually stymied. As long as both parties must agree before multi-unit bargaining can be introduced, and then only on an ad hoc basis, many of the aforementioned negative factors that have given rise to the Mutual Aid Pact are going to persist to disrupt industrial relations in the industry.

With reference to the contention that the supplemental payments provision will encourage Pact members to seek similar solutions to common problems, it is logical to conclude that the Pact does provide impetus for such a development. It does not follow, however, that the Pact itself provides channels that actually make the achievement of common positions more likely to occur than would be possible in the absence of the agreement. There is no way that one or more Pact members can directly influence the labor policies of another carrier except by threatening to withdraw themselves. If the complaining party should actually withdraw, then the issue becomes a moot point.

There is one aspect of the supplemental payments provision that should be observed during the three year trial period: in the event of a period of frequent strikes in the industry, marginal firms or firms losing money could find themselves in a difficult financial position. If these firms are in the role of paying out any substantial amount in the form of supplemental payments, their solvency could be threatened. It is not desirable labor policy that any provision of the Pact serve to remove a competitor from the industry or, more likely, to return a trunk-line to the direct government subsidy roles. On the other hand, should these same firms be on the receiving end of such payments, the supplemental payments provision could well

serve to protect these same firms from otherwise meeting such undesirable fates. Hence, one hopes that the C. A. B. will carefully study the experience under this section.

On the positive side, the Pact does have several features that are desirable for a private bargaining system. Membership is open to all trunk air carriers who possess a certificate of convenience and necessity from the C. A. B. Every facet of the Pact is available for public inspection at the offices of the C. A. B. in Washington. All payments and receipts under the Pact must be reported. The operation of the agreement is handled entirely by the carriers themselves. Hence, the Pact does not involve any select group who possess arbitrary administrative powers. The C. A. B. always retains the right to intervene at anytime if it should appear that the Pact is adversely affecting the public interest in the air transportation industry. In short, it seems that in this particular industry the Pact is but an outward manifestation of an extremely unstable and insecure labor relations foundation. The public interest could be better served if more attention were directed toward the causes of strikes than at the symptoms of trouble.

CHAPTER II

# THE "SERVICE INTERRUPTION INSURANCE POLICY" OF THE RAILROAD INDUSTRY

## Introduction

Effective as of September 1, [illegible], a far-reaching program designed to minimize a portion of the revenue losses during strike periods became operative on virtually every railroad in the nation. Prior to this date, each line had been offered an opportunity to join. Currently, the participating members account for ninety-nine per cent of the freight ton miles and passenger miles carried by the industry.[1] The plan itself is formally known as the Service Interruption Insurance Policy. More commonly, it is called simply the railroad [illegible] insurance plan.

Beginning in July, 1960, a strike by the Brotherhood of Railroad Trainmen (B. R. T.) [illegible] the Long Island Rail Road Company (L. I. R. R.) [illegible] of the insurance plan, the line [illegible]

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[1] "Brief on Behalf of Plaintiffs," Civil Action No. 3496 (S. D. N. Y.), January 17, 1961, p. 3. There are approximately 190 participating lines. The only major railroad that is not currently a member is the New York, New Haven, and Hartford Railroad. This line was forced to withdraw from the plan due to its current financial problems.

twenty-six days that the shutdown lasted. Shortly afterward, the B. R. T. brought suit against the L. I. R. R. and the Association of American Railroads (A. A. R.) challenging the legality of the insurance plan.

The ensuing legal proceedings were of significance to the present study for two essential reasons. First, during the lengthy trial, many of the operational details of the policy became public for the first time. Secondly, the case itself was the initial legal test of the principle of mutual assistance by employers through the use of strike insurance. Hence, the judicial rulings which were rendered by both the original and the appellate courts in upholding the plan established an important precedent.

## A Brief Background of Industrial Relations in the Industry

The outstanding characteristic of the railroad industry is undoubtedly the fact that the government has traditionally assumed a major role in virtually all of its affairs. The quasi-public nature of the industry stems from the fact that the federal government is an active force in both the product market and the labor market of the industry. Most operation decisions and rate-setting activities are regulated by the "oldest and the most powerful" of the regulatory agencies--the Interstate Commerce Commission (I. C. C.). For example, the I. C. C. possesses power over decisions concerning rate changes, abandoment of

lines, consolidation proposals, security issues, and safety enforcement measures.[2] Likewise, labor policies also have long been the subject of federal legislation.[3] Currently, the major statutes governing employee relations are the Railway Labor Act, as amended; The Railroad Unemployment Insurance Act; and the Railroad Retirement Act. The latter two laws are counterparts, for railway labor, of the State Unemployment Insurance Acts and the Social Security Act for labor in other industries. The Railway Labor Act was discussed in the preceding chapter on the Mutual Aid Pact and, accordingly, the detailed mechanics do not need to be repeated here. In short, the amended Act contains guarantees for the right to organize and to bargain collectively, prohibitions against certain employer unfair labor acts, and procedures to facilitate the peaceful settlement of disputes over contract interpretation and contract changes.

The industry itself is certainly far from being competitive. Yet, in the broad sense, it does have substantial competition from the other forms of surface, underground, air, and water transportation. Moreover, the inroads made

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[2]Reed C. Richardson, The Locomotive Engineer 1863-1963: A Century of Railway Labor Relations and Work Rules (Ann Arbor: Bureau of Industrial Relations, 1963), p. 33.

[3]For a description of the evolution of federal intervention into railroad labor relations, see ibid., Chapter XV; see also Jacob J. Kaufman, Collective Bargaining in the Railroad Industry (New York: King's Crown Press, 1954), Ch. V.

by these other modes of transportation have been increasing annually.[4] Labor costs are very high in the industry--accounting for over half of the total operating expenses on the average line.[5] Thus, alterations in the level of wages have a major effect upon the industry cost structure. The fact that the control over rates rests with the I. C. C. has meant that wage increases "have had certain serious short-run financial consequences."[6] For if new rates are approved by the I. C. C., they are usually granted only after long, drawn-out proceedings but they are not retroactive. In addition, in some instances competitive conditions have not allowed the lines to increase their rates to the maximum allowed by the I. C. C.[7] The interaction of all of these forces has been summed up by the leading writer on the subject as follows:

> Thus, the financial and competitive conditions of the railroads and the rate-making procedures of the Interstate Commerce Commission seriously affect the collective bargaining relationships between the carriers and their employees and explain, in part, the recurring strikes and the breakdown of collective bargaining in the industry.[8]

Management, in turn, has sought to find alternative methods of rescuing their respective lines from the economic

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[4]Kaufman, op. cit., pp. 7-9.

[5]Ibid., p. 10.

[6]Ibid.

[7]Ibid., pp. 10-11.

[8]Ibid., p. 15. (see, infra, footnote 22 for a comment on more recent financial developments.)

quagmire of the past few decades. The two most prominent policies have been the consolidation of competing lines and the introduction of advanced technology. Both of these tactics have become the frequent subject of conflict between management and labor.[9]

Besides the problems emanating from the product market, the bargaining structure of the industry has also proved to be breeding ground of unrest. There are over fifty different craft unions that represent about 725,000 railroad workers.[10] Most of the unions are quite small with the majority of the members being concentrated in twenty-three national labor unions. Of these twenty-three, five are known as the operating unions and the remainder are the major non-operating unions. Approximately twenty-five per cent of the unionized employees in the industry are in the operating brotherhoods. Typically the operating brotherhoods bargain as individual crafts while the non-operating unions tend to bargain on a federated basis.

Besides the characteristic of multiple unionsm, there is also the element of rival unionism. In quite a number of instances, there are several unions competing for

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[9] Ibid., pp. 12-17.

[10] For a listing of the unions in the industry and the lines with which each bargains, see the Twenty-ninth Annual Report of the National Mediation Board (Washington: U. S. Government Printing Office, 1963), pp. 89-93.

the same members.[11] The overlapping of jurisdictions has been especially true of the Brotherhood of Railway Trainmen which frequently competes with the Conductors' Union and the Switchmen's Union. Similarly, numerous conflicts have arisen in the past between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen.

The disrupting effects upon industrial relations caused by the presence of multiple and rival unionism have only served to intensify the traditional militancy of the operating crafts. This militancy has developed due to "the historical background of wage cuts in depressions, court injunctions, the use of militia in strikes, the use of violence, and the hostility of management toward the workers."[12] Moreover, as was true in the airline industry, the highly fragmented bargaining structure of the railroad industry has greatly increased its exposure to strikes. The larger the number of unions, the more numerous are the contracts, negotiations, and strike threats. Multiple unionism has contributed instability and unrest to the development of collective bargaining in the railroad industry.

In recent years, divisive forces have tended to increase. Falling employment figures in the industry have

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[11] Ibid.; see also Kaufman, op. cit., pp. 46-57.

[12] Kaufman, op. cit., p. 46.

meant declining union rosters. Consequently, the loss of members has weakened some of the unions and has meant increased rivalry between the unions for the workers who remain. Moreover, the problems associated with declining membership have led to many disputes over seniority, vacancy replacements, promotions, and pension rights. The net result of all of these internal and external sources of conflict has been that all attempts in the past to achieve complete or partial industrial unionism or even effective joint bargaining in the industry have failed.[13]

A final consideration concerns the actual impact of a strike upon management. Virtually all passenger service and much of the freight service carried by the railroads is not postponable. If the service cannot be provided at a prescribed time, then the business is lost entirely to other forms of transportation or through cancelled plans. Consequently, the industry is one of those in which the strike remains a potent weapon.

## The Establishment of the Service Interruption Policy

### Contributing Events

The railroad industry has stated that the immediate cause giving rise to the development of the strike insurance

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[13] Ibid., pp. 47 and 52.

proposal was the alleged change in strike tactics employed by the railroad unions.[14] Prior to 1932, industry-wide bargaining had occurred only intermittently. In 1932, eighteen unions, including most of the major ones, joined together and accepted a 10 per cent wage reduction in order to aid the financially hard pressed railroads.[15] Since then, bargaining at the national level has tended to be the standard. Accordingly, in the immediate post war period between 1946-1950, there was one actual and three threatened industry-wide strikes.[16] In virtually every instance, the striking union was seeking to secure a settlement in excess of the recommendations offered by Presidential Emergency Boards. The avoidance of or the ending of the strikes which either did or threatened to shut down the entire railroad industry was achieved only after federal intervention through the use of injunctions, seizure, and/or special legislation. As a result, the railroads have contended that "beginning in 1950, there was a shift in the tactics of railroad labor away from the national strike to the selective or Wainsaw strike against

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[14]"Brief on Behalf of the Defendant Railroads," Civil Action No. 60-3496 (S. D. N. Y.) (March 16, 1962), pp. 59-67

[15]Richardson, op. cit., pp. 401-403.

[16]Kaufman, op. cit., pp. 86-88.

one or a few of the railroads."[17] The railroads have also pointed to the fact that the strikes since 1950 have been characterized by union attempts to secure terms that exceeded the recommendations given by Presidential Emergency Boards.[18]

It is apparent that the shift in union strike tactics has occurred as a result of increasing awareness by union leaders of the shortcomings of nation-wide strikes. Mr. H. E. Gilbert, President of the Brotherhood of Locomotive Firemen and Enginemen, was quoted in 1960 as saying:

> There is no use kidding ourselves. If we tried that [i.e., a nation-wide strike] we'd get enjoined by a court in no time.[19]

With respect to the whipsaw charge, the unions have responded by saying that they have only been seeking the objective of "individual bargaining rather than industry-wide bargaining."[20]

As for the practice of striking to attain benefits over and above those recommended by the government boards,

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[17]"Brief. . .of Defendant Railroads," op. cit., p. 62.

[18]Ibid., pp. 62-63; The Union parties acknowledged this fact in their brief, "Brief . . . Plaintiffs," op. cit., p. 45, with the statement that ". . . the recommendations of the Emergency Boards have been generally unacceptable to labor in recent years."

[19]William B. Clabby, "Unions Harden Stand, Say Public Snubs Roads 'featherbed' Attacks," Wall Street Journal (March 17, 1960), p. 14.

[20]"Brief. . .Plaintiffs," op. cit., p. 2.

the unions have responded by stating that management has seemed to believe that labor should "invariably accept the findings of Presidentially-appointed-Emergency Boards." Thus, they have replied that there is nothing illegal or shameful about a decision "to embark upon a legal strike in order to seek demands contrary to the recommendations of an Emergency Board."[21]

While the interjection of the selective strike as a bargaining tactic and the continuation of the trend of the unions to seek settlement terms above those recommended by the respective government boards were important instigating considerations, the interest of the industry in a mutual assistance agreement was also aroused by other factors. The year 1959 marked the beginning of the attempt by the railroads to institute their revised work rule plans. The railroads undoubtedly felt that the likelihood of strikes would be increased. Also, during this period, the industry claimed it was in a precarious financial position. In 1959 the average railroad was returning only 2.72% on invested capital.[22] Therefore, many lines were not in a position to sustain any prolonged strike and were quite vulnerable to the use of a whipsaw strike pattern.

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[21] Ibid., p. 2.

[22] "Brief . . . Defendant Railroads," op. cit., p. 63. The average figure of 2.72% return on invested capital is misleading. The financial positions of the respective lines

The railroads were also doubtful that the practice of government seizure in the late forties could be relied upon in the future. The tactic of peacetime seizures of the facilities of private industry had been struck down in a Supreme Court decision in 1952 (Youngstown Sheet and Tube Co. v. Sawyer).[23] And lastly, the railroads sought a countervailing strike subsidy to the devices that were, in the event of a strike, used by the railroad unions to reduce the economic effects of income losses. Most of the unions had formal strike benefit funds that were collected nationally from all of the union membership and were payable

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in the industry vary widely. In 1959, for example, Fortune (see "The Fortune Directory II," Fortune, August, 1959, p. 129) reported the following with respect to the rates of return sustained by the thirty-three largest lines for 1959:

| Rate of Return on New Invested Capital | Number of Firms In Category |
|---|---|
| Twice Average (over 5.4%) | 9 |
| Between 2.72% and 5.4% | 11 |
| Overall Average (2.72%) | 0 |
| Between 0 and 2.72% | 9 |
| Negative Return on Capital | 4 |

Interestingly, however, twelve railroads are listed in Table 3 (infra p. 97) as having received payments under the program. Of the twelve, seven were among the thirty-three firms included in the Fortune survey. All seven of these lines returned less than the 2.72% on net invested capital

[23] 343 U. S. 579 (1952); see also Kaufman, op. cit., pp. 131-133.

to the particular members on strike. Also, under the provisions of the Railroad Unemployment Insurance Act of 1938, strikers who have complied with all of the terms of the Railway Labor Act and with the constitution and bylaws of their union are entitled as of their first day of unemployment to receive unemployment compensation benefits for up to 130 days.[24]

It was these events which, combined with the long history of unstable labor relations conditions, fostered the Service Interruption Policy.

Specific Origins

In a May, 1959, edition of the industry trade publication, Railway Age, the following statement appeared:

> Lawyers from the A. A. R. and member roads are investigating several plans for joint action if this fall's negotiations result in a strike against a single road. This was confirmed at a recent New York City press conference by A. A. R. President Daniel Loomis . . . Mr. Loomis pointed out that strike insurance and revenue sharing plans had been considered in the face of strike threats in the past, but that events had not made it necessary to put them into effect.[25]

Indeed, as early as March, 1958, the Board of Directors of the A. A. R. requested their General Counsel, Gregory S. Prince, to begin consideration of a feasible plan for mutual

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[24]Both national strike benefit programs and unemployment compensation during strikes will be discussed in Part II of the present study.

[25]"Strike Pact?" Railway Age, Vol. 146, No. 20 (May 18, 1959), p. 70.

assistance.[26] Accordingly, a committee of industry lawyers and insurance law specialists began to prepare a proposal. The determination of the insurer was accomplished as follows:

> After drafting the policy, counsel for A. A. R. met with Mr. Edward S. Hogg, a senior partner in the London insurance brokerage firm of Hogg, Robinson, and Capel-Cure, in May 1959 and Mr. Hogg recommended that the policy be written by Imperial Insurance Company, Ltd., an insurance company that had previously been formed by Mr. Hogg and his associates in Nassau, Bahamas.[27]

Shortly thereafter on July 1, 1959, application for participation in the insurance program were sent by the A. A. R. to "every railroad in the United States." Accompanying the applications was a letter from the A. A. R. which sought to explain the procedures, costs, and administration of the proposal. The deadline for returning the applications was August 15, 1959.

Under the terms of the original policy, a minimum participation figure was established before the plan could become operative. The requirement was that member railroads must account in total for at least sixty-five per cent of the gross operating revenues of all railroads operating within the United States (excluding Alaska and Hawaii)

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[26] "Brief . . . Plaintiffs," op. cit., p. 2.

[27] "Brief . . . of Defendant Railroads," op. cit., p. 12.

for the preceding year.[28] During 1958, the railroads grossed $9.5 billion. Accordingly, the requirement meant that participants whose individual revenues aggregated to $6.2 billion in 1958 would be necessary to make the plan operational. This total could have been achieved if only the seventeen largest of the 113 Class I railroads in the nation had agreed to join.[29] Concerning the likelihood of reaching the required participation figure, one rail executive--before the outcome of the application requests was made public--was quoted as follows:

> . . . the plan has almost unanimous support from the industry. Even so there's the hidden persuader that if some roads refuse to join, the word would leak out and they would be wide open to union attack.[30]

In actuality, the response to the program was such that it was "overwhelmingly accepted" by "practically the entire industry."[31] Mr. Prince stated:

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[28]"Service Interruption Policy," issued by Imperial Insurance Company, Limited, Article X (original policy of 1959). [In the revised version of 1962, the figure for renewal was lowered to 50% of the gross operating revenue of the industry for the preceding calendar year prior to the anniversary date of the policy. If this participation figure is not attained, the insurance will cease automatically on the expiration date.]

[29]William B. Clabby and Daniel R. Jones, "Railroads Devise Plan to Hedge Their Risks If Unions Walk Out," Wall Street Journal (July 13, 1959), p. 12. A Class I railroad is one that has a gross operating revenue of more than $1,000,000 per year.

[30]Ibid., p. 1.

[31]Press Release by the Association of American Railroads, Washington, D. C. (August 17, 1959). [Mimeographed material.]

> We were not sure when we started out that we could get industrywide acceptance for such insurance. I can tell you, however, the 65% acceptance required to go ahead with the plan was well exceeded. We got almost unanimous acceptance.[32]

On August 24, 1959, the administrative officials of the program--known as the Advisory Committee--and their counsel met with the officials of the Imperial Insurance Company, Ltd., in Nassau. The Advisory Committee had reviewed and approved the individual application forms. As a result of this meeting, the Service Interruption Policy was officially adopted--and inaugurated into service. The plan became effective September 1, 1959, for an initial three year period.

## The Conceptual Provisions of the Policy

### Administration

The Service Interruption Policy is administered by a three-man Advisory Committee. Each member of the Committee is the chairman of one of the three regional bodies that form the organizational structure of the A. A. R. Specifically, these men are the respective chairmen of the Eastern Railroad President's Conference, the Association of Western Railways, and the Association of Southeastern Railroads.

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[32]Wilbur J. Brons, "Rails Strike Insurance 'Tailor Made'," The Journal of Commerce (November 5, 1959), p. 10.

The Advisory Committee has a position of importance in the insurance plan. Initially, the Committee must review the applications of all the railroads that seek to join the plan and certify that the submitted valuation of fixed costs that each respective railroad must bear in the event of a strike is a reasonable estimate. In the event of a strike, the Committee is required to make a determination as to whether or not the strike is a covered strike within the terms of the policy. Without an affirmative determination, a participating line is ineligible for benefits. Should there be only a partial shutdown of service or a line, the Committee must both determine if the strike is covered and approve the amount of benefits to be received under the agreement. The Committee could alter the amount requested by a partially shutdown line if it would deem the request to be excessive.

Coverage

Under the terms of the policy, a railroad has an indemnifiable "work stoppage" when:[33]

1. The strike is:
   a. Contrary to the provisions of the Railway Labor Act, or
   b. Is to enforce demands contrary to the recommendations of an Emergency Board appointed by the President of the United States, pursuant to the Railway Labor Act, or

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[33]"Service Interruption Policy," op. cit., Article III (1962 version).

c. Is in resistance to the application of recommendations of such Emergency Boards, or

2. Where demands or proposals:

a. Are directed or may then or thereafter affect, or

b. Are made by insured railroads representing more than 50% of the aggregate of insured railroads' Daily Indemnities and such an Emergency Board has not been appointed or, if appointed has failed to make definite findings or recommendations on the merits thereof.

If the Advisory Committee rules that the strike is covered, the struck carrier is entitled--in the event of a total shutdown--to an amount equal to the total fixed costs per day multiplied by the number of days that the strike continues. The maximum number of days that benefits would be forthcoming in any single dispute is limited to 365 days. The daily total fixed costs--called the daily indemnity--consists of the applicant's sum total dollar valuation of the daily cost of each of the following nine items:[34]

1. Ad valorem and other taxes on carrier property not based on revenues or income.

2 Fixed interest on debt less the part apportionable to non-carrier property.

3. Mandatory payment to sinking funds provided for in mortgages on the applicants' carrier property.

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[34]"Application for Service Interruption Policy," Section 3, (a)-(i). Printed form associated with the Service Interruption Insurance Policy.

4. Interest or dividends on equipment trust certificates or conditional sales agreements.

5. Payments on the principal of equipment trust certificates or conditional sales agreements, or under leases or trackage agreements covering property used by the applicant in the carrier operations.

6. Insurance on carrier property or operations exclusive of this insurance.

7. Pension and payments into pension funds.

8. Contractual or fixed obligations incurred in connection with its operations.

9. The cost of supervisory, official, and other forces necessary in its opinion to preserve applicants' carrier properties in a standby condition suitable for resumption of services at the end of a suspension of operations.

In the case of a partial shutdown of service, the policy is operational.[35] The struck railroad is required to submit sufficient information concerning the strike to the Advisory Committee to enable it to determine if the strike is covered by the policy and the amount of benefits that it is entitled to receive. The Advisory Committee then notifies the insurance company of the amount it should pay to the struck line. The benefit procedure is then the same as in total shutdowns.

Benefit Payments

The struck carrier must notify the Advisory Committee for each day that it seeks coverage. The Committee, if it

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[35]Service Interruption Policy, op. cit., Article V (b).

approves the request for coverage, then will notify the Imperial Insurance Company to pay the prescribed daily indemnity to the struck railroad. The payment by the insurance company directly to the struck railroad must be made within twenty-one days after the receipt of the approval notice. The entire procedure is repeated separately for each day that a covered strike continues.

Premimum Payments

Each participating railraod assumes an obligation for three different types of premiums when it subscribes to the insurance plan. The first is known as the minimum premium and is payable annually. The total of the minimum premiums paid by all of the participating members comes to $150,000.00 a year. It is paid to the insurance company for the purpose of covering the expenses involved in the administration of the program. The amount paid by each railroad is based upon the ratio that the daily indemnity figure of each line bears to the total daily indemnities of all of the participating lines. Given the following fictitious numerical figures, the minimum premium would be computed thusly:

$$\text{Own ratio} = \frac{\text{total daily indemnity of } \underline{\text{own}} \text{ railroad}}{\text{Total Daily Indemnities of } \underline{\text{All}} \text{ Participating Railroads}} = \frac{\$50{,}000}{\$5{,}000{,}000} \cdot \frac{1}{100}$$

Therefore, the minimum premium for the fictitious railroad whose own daily indemnity is one-hundreth of the total daily indemnities of all participating railroads would be:

$$\text{own ratio} \times \text{Total Minimum Premium} = \frac{1}{100} \times \frac{\$150,000}{1} = \$1,500.$$

The second premium is paid only once--namely, when the particular railroad joins the insurance agreement. This premium can be called an "escrow premium" since it is, in fact, an amount that is placed in an escrow account. The purpose of this premium is to provide an emergency fund for the insurance company to be used only in the event that benefits are due to a struck line and the assessed third type of premium has not yet been received from a non-struck participant. In such an event, the assessed amount is deducted from the escrow premium. The escrow premium is equal to the daily indemnity of each subscribing railroad for one day. In terms of the aforementioned fictitious example, the railroad would have been required to deposit $50,000 in the escrow account before its own insurance would take effect. Similarly, in the example, the total daily indemnities of all of the participants came to $5,000,000 which would also be the total sum of all the escrow premiums. Parenthetically, with regard to the escrow premium each participant receives four per cent annual interest on its deposit. In the event that the railroad should decide not to renew its policy, the entire principal and accumulated interest are refunded.

The third premium--called the additional premium--is by far the most significant. After the Advisory Committee determines that a struck railroad is entitled to benefits, the insurance company obtains the funds to pay the benefit's by billing the non-struck members. The amount that each railroad is charged is equal to its prorated share of the daily indemnity due the struck railroad. This amount is the additional premium. In the example used above, the company whose own ratio is one-hundredth of the total indemnity of all the participants would be required to pay one-hundredth of the daily indemnity of the struck line. Thus, if the daily indemnity of a struck carrier was equal to $75,000 per day, the fictitious railroad would be billed $750 per day as an additional premium for the duration of the strike against the other line. The $750 was obtained as follows:

$$\text{own ratio} \times \begin{matrix}\text{daily indemnity of} \\ \text{struck railroad}\end{matrix} = \frac{1}{100} \times \frac{\$75,000}{1} = \$750$$

The additional premium that any one railroad must pay in a given year is subject to one of two limitations--whichever occurs earlier. The first restraint is that the maximum number of days that benefits can be received by a struck carrier in any single work stoppage--or paid by the other policy holders--is 365 days. The second restraint is that the maximum liability of any single participant for minimum and additional premiums is set at twenty times the daily

indemnity of each member.[36] Accordingly, in the fictitious example the maximum liability that a railroad whose own daily indemnity is $50,000 per day would be either:

(1) own ratio x daily indemnity of struck railroad x 365 = total liability under restraint #1

(2) own daily indemnity x 20 = total liability under restraint #2

$50,000 x 20 = $1,000,000

The additional premium, when viewed as an absolute sum, could prove to be an expensive liability.[37] While it appears initially that the magnitude of the assumed liability might be a hindrance to membership in the plan, the reverse side of the coin should be examined before a judgment is passed. The total amount of benefits that a railroad would be entitled to receive--in terms of the fictitious example--if it sustained a covered strike would be:

own daily indemnity x 365 = $50,000 x 365 = $18,250,000

Thus, in this instance, a participating railroad would accept a $1 million annual liability in exchange for an eligibility claim of over $18 million in the event of a strike.

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[36] Ibid., Article V (a).

[37] It should be noted that a struck railroad which is receiving benefits does not pay additional premiums during the period of the shutdowns [see ibid., Article V (a)].

The absolute value of the amount of funds that the Service Interruption Policy could marshal can also be obtained from the figures as shown below:

Total Daily Indemnities of all Insured Railroads x 20 = Total Funds Available in Any One Year

To recapitulate briefly, the procedure that takes place in the event of a strike is as follows: after the Advisory Committee notifies the insurance company that an indemnifiable dispute has occurred, the insurance company has twenty-one days to make its payment to the struck line. The insurance company, in the meantime, takes the total daily indemnity of the struck railroad and divides it into separate bills based upon the ratio that each individual non-struck line bears to the total of all daily indemnities. The additional premium is then determined by multiplying the ratio of each non-struck line times the daily indemnity of the struck line. The insurance company computes the additional premium figures and bills each non-struck member. This process must be completed within two days after the approval notice is received from the Advisory Committee. Payment of the additional premium is due within fourteen days after the premium request is sent. In the event that payment is not received within this period, the insurance company may deduct the additional premium from the escrow account of the

line that failed to make its payment. The entire process is repeated for each day that the strike lasts.[38]

Nullifying Conditions

The occurrence of either of two situations renders the entire insurance plan void in a particular dispute. One is that if the government should seize a struck line, no benefits are due the struck company.[39] The second nullifying circumstance is if several railroads whose combined daily indemnities exceed fifty per cent of the total daily indemnities of all participating lines are struck.[40] In this instance, as in the former, no benefits will be paid to any of the struck railroads. The theory in the second situation is that in any situation in which such a large number of railroads are shutdown, federal intervention seems certain.[41]

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[38]The discussion in this paragraph is drawn from material contained in ibid., Article V (b), (c), and (d).

[39]Ibid., Article VI (1).

[40]Ibid., Article VI (a).

[41]See "Railroad Strike Insurance Plan Explained to Buyers at A. M. A. Meet," The National Underwriter (November 13, 1959), p. 1; The same view was expressed by Mr. Stanfield Johnson, Chariman of the Association of Southeastern Railroads and a member of the Advisory Committee in a personal interview in Washington, D.C. (June 11, 1963); see also Clabby and Jones, op. cit., pp. 1 and 12.

## The Actual Operation of the Policy

Having reviewed the provisions of the Service Interruption Policy, attention in section will be focused upon the implementation of the program. In Table 3 a partial listing--containing all disputes for which information is available--is presented of the strikes in which the insurance plan has been involved. Aside from the strike against the Alton and Southern, all of the major disputes in which the plan has been operational are listed. In addition, five minor strikes were covered in the first four years that the insurance plan has been effective.[42] Thus, strike insurance was involved in a total of ten disputes between September 1, 1959 and October 1, 1963.

The total of the daily indemnities of the approximately 190 participating railroads was recently stated to be $5,842.242.72.[43] From this figure, as alluded to earlier, the total amount of funds that conceivably could be raised under the terms of the policy can be obtained. Each participant can be assessed a maximum of twenty times its individual

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[42]Telephone conversation with Mr. Stanfield Johnson, October 1, 1963. Details on these strikes were not available.

[43]"Brief on Behalf of Plaintff-Appellants," Before the Second Circuit Court, Docket No. 27989 (March 14, 1963), p. 3; also, Mr. Johnson in the interview of June 11, 1963, estimated the total daily indemnity figure to be "approximately six million dollars."

TABLE 3.--Partial Listing of Payments Provided by the Service Interruption Policy[a]

| Recipient Railroad | Date of Strike | Degree of Shutdown | Daily Indemnity | Total Received |
|---|---|---|---|---|
| Alton and Southern Railroad | Dec.31,1959-Jan.11,1960 | Complete | $ 3,806.15 | $ 45,650.00 |
| Long Island Railroad | July 10,-Aug.3 1960 | Complete | $ 50,000.00 | $1,350,000.00 |
| Chicago and North Western Railroad | Aug.30-Sept.28 1962 | Complete | $100,000.00 | $3,000,000.00 |
| Pennsylvania Railroad | Sept.1-Sept.12 1960 | Complete | $600,000.00 | $3,600,000.00 |
| Baltimore and Ohio Railroad; Central Railroad of New Jersey; Erie-Lackawanna Railroad; Lehigh Valley Railroad; New York Central Railroad; New York Dock Railway; New York, New Haven, & Hartford Railroad; and the Reading Company[b] | Jan.10-Jan.23 1961 | Partial | (varied) | (unavailable) |

[a]Source: Interview with Mr. Stanfield Johnson, Chairman of the Association of Southeastern Railroads, Washington D. C., June 11, 1963.

[b]The strike involved a dispute between the New York Harbor Carriers' Conference and the Railroad Marine Harbor Council.

daily indemnity. Therefore, the total fund available would be $116,844,854.40 per year.

While detailed information concerning the actual success of the program in achieving the objective of management is sparse, some observations are possible. The first is that the original policy was renewed in 1962 for another three year period. There were no major amendments to or substantial changes in the renewed policy from its original form. Second, since the insurance plan covers all direct fixed costs and since a struck firm has no variable costs during a strike period, the only element that is absent from coverage is profit. Therefore, the major motivation for rapid settlement of a dispute is the lack of profits being earned. But since in the past several struck railroads have been operating at annual losses, it is conceivable that a firm could improve its short run financial situation by sustaining an insured strike in lieu of the alternative of seeking a settlement and continuing to operate at a loss. The strike in 1962 against the Chicago and North Western Railway raised this very question.[44] While

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[44]"Strike Benefits Gave C & NW 3-Month Profit Despite Revenue Drop," Wall Street Journal (October 17, 1962), p. 21; the financial figures contained in the article represent quarterly data which complicates the ability to make statements concerning the thirty day strike. Also, the figures represent all corporate activities of the firm--not solely the operation of the railroad. Nonetheless, the implication of the article is clear. Strike insurance payments enabled the firm to show a profit during a quarter in which its main source of income was shut down for thirty days.

the necessary details to draw a definite conclusion are unavailable, it would seem that during the insured C and NW strike the overall financial position of the firm improved despite the fact that during the quarter it was shut down for thirty days. This point will be pursued in the closing comments of this chapter.

## The Challenge to the Legality of the Policy

### The Initial Union Reaction

The railroad operating unions collectively denounced the objectives of the insurance program but, interestingly, the unions were mixed in their assessments of its potential effects. A typical comment concerning the goals of the agreement was:

> The strike insurance plan was developed as an offensive weapon designed to assist, facilitate, and implement the declared industry purpose of accomplishing changes in the prevailing rules.[45]

W. P. Kenndey, President of the Brotherhood of Railroad Trainmen, charged that the railroads had established "walk-out insurance, not strike insurance," and that the agreement was "not a shield for the railroads, but a sword against labor."[46] Mr. Kennedy also claimed that "unless it is

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[45]"Brief . . . Plaintiffs," op. cit., p. 4.

[46]"B. R. T. Sues L. I. R. R.," Railway Age, Vol. 149, No. 11 (September 12, 1960), p. 65.

exposed for the false front that it is, it will destroy or make meaningless the right to strike in this country."[47] Other union leaders--at least outwardly--were more passive in their public pronouncements. H. E. Gilbert, President of the Locomotive Firemen and Enginemen remarked:

> I frankly am not too concerned about strike insurance. From what I know about it, the program does not reimburse a road for traffic it has lost to competing forms of transportation during a strike. That's really our biggest weapon.[48]

Similarly, G. E. Leighty, Chairman of the Railway Labor Executives' Association, stated:

> Frankly, I cannot take the railroad's strike insurance program as a serious threat to organized labor, although I do recognize in it dangerous implications for the future welfare of the industry. Moreover, any program that tends to encourage stubbornness on either side in a labor dispute is, I submit, unwholesome and contrary to the public interest. The strike has always been railroad labor's weapon of last resort. It will remain that insofar as we are concerned but all the insurance protection in the world could not prevent a strike on the railroads if management's policies continue to be stubborn.[49]

Despite these divergencies in veiwpoints, when strike insurance became involved in its first major strike it was

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[47] John Barry, "Strike Insurance: A Threat to Collective Bargaining," The American Federationist (March, 1961), p. 17.

[48] Clabby, op. cit., p. 14.

[49] Press Release No. 92 of the Railway Labor Executives' Association concerning an address by G. E. Leighty, before the 37th Convention of the Brotherhood of Locomotive Firemen and Enginemen, Washington, D. C., July 27, 1959. [Mimeographed Material.]

taken immediately to court for a legal test. Beginning on July 10, 1960, a twenty-six day strike occurred between the Brotherhood of Railroad Trainmen (B. R. T.) and the Long Island Railroad Company (L. I. R. R.). Accordingly, on January 17, 1962, the B. R. T. instituted a suit in the United States District Court for the Southern District of New York which challenged the legality of the Service Interruption Policy in particular and strike insurance in general.[50]

The Proceedings before the District Court

The lawyers for the union based their case upon the contention that the Service Interruption Policy violated three statutes--namely, the Railway Labor Act,[51] the Interstate Commerce Act,[52] and the Sherman Act.[53] Under the relevant section of the Railway Labor Act, it was argued that the strike insurance plan was a per se violation of the duty of the employer to bargain in good faith and that it introduced an element of multiemployer bargaining without the consent of the plaintiffs. Under the Interstate Commerce Act, it was contended that the escrow account constituted an illegal pooling of the revenues of competing

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[50]In all of the interviews that I had with representatives of the airline, newspaper, and railroad industries, and with various union officials, the railroad case was invariably cited as being the precedent-establishing decisions for upholding the legality of employer mutual assistance programs.

[51]45 U. S. C. 152. [52]49 U. S. C. 5 (1).

[53]15 U. S. C. 1.

carriers. Under the Sherman Act, it was asserted that the plan represented a unilateral attempt by the railraods to fix the price of labor which would constitute an illegal restraint of trade.[54]

The railroads[55] based their defense upon a denial that the three aforementioned statutes were violated and on a contention that existing labor law recognized the legality of the insurance concept. With respect to the Railway Labor Act, the railroads claimed that the purposes of the Act were furthered by the strike insurance program. By its specific denial of benefits to companies that refuse to accept recommendations tendered by Emergency Boards, the

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[54]The reasoning used by the unions in seeking to invoke the Sherman Act provisions is interesting because it represents a paradox in the development of American labor law. For years unions sought exemption from the anti-trust laws of the nation on the basis of the fallacy of comparisons between the operation of the product market and of the factor market. Yet, in this case, the contention made by the Union is that labor is a commodity and that wages and working conditions represent the price of the commodity. Since strike insurance represents a concerted activity involving employers who control a major portion of the labor market, these participating employers are able to affect the price of the commodity in a manner in which they would not otherwise be able to do. Hence, strike insurance is price fixing which is a per se violation of the restraint of trade provisions of Section 1 of the Sherman Act.

[55]Besides the Long Island Rail Road, the suit also included as defendants the Association of American Railroads and twenty-two other railroads.

defendants argued that implicit encouragement was given to railroad bargainers to accept the recommended terms for settlement. Therefore, the likelihood that an actual strike would materialize was seen to be somewhat lessened. As to the anti-pooling provisions of the Interstate Commerce Act, the lawyers for the railroads simply pointed out that the relevant section was designed to prohibit a type of anti-competitive activity in the transportation industry. Accordingly, they stated that the anti-pooling prohibition was "entirely foreign to the facts of this case." While admitting that the agreement was comprised of competitors, they asserted that:

> First, strike insurance does not affect competition between railroads; no road has surrendered any of its independence in competing for transportation business. Indeed, the insurance operated to assist the struck road to survive and thus maintain its existence as a competitor. Second, and of equal importance, there is nothing about strike insurance that apportions transportation business or the receipts therefrom otherwise than according to individual performance.[56]

Concerning the Sherman Act prohibition against price-fixing, the railroads merely cited as their defense Section 6 of the Clayton Act[57] that "the labor of a human being is not a commodity or article of commerce."

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[56]"Brief . . . Defendant Railroads," op. cit., pp. 97-98.

[57]15 U. S. C. 17.

The railroads also sought to establish as a part of their defense that the principle of strike insurance was a legal economic weapon that was specifically sanctioned by both the Clayton Act and the Norris-LaGuardia Act. With respect to the former, the anti-injunction clause stated that legal protection was extended to:

> . . . paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value.
>
> . . . nor shall any of the acts specified in this paragraph be considered or held to be violation of any law of the United States.[58]

With respect to the Norris-LaGuardia Act, injunctive immunity was granted to numerous activities in the labor relations field--one of which was the:

> Paying or giving to, or withholding from, any person participating in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value.[59]

Thus, the railroads claimed that these two sections specifically made the Service Interruption Policy a legal activity.

The Decision of the Lower Court

The strike insurance program was, therefore, tried solely upon its compatibility with these major statutes.

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[58] 29 U. S. C. 17

[59] 29 U. S. C. 104

Chief Judge Sylvester J. Ryan stated clearly the standards for the judgment that was rendered by the court:

> The only question presented for determination is whether as a matter of law membership in the railroad industry strike insurance plan here presented violated any of the statutes and is unlawful as charged.[60]

In essence, the ruling was a complete validation of the entire defense presented by the railroads. Concerning the Railway Labor Act, the Court adhered to the position of the railroads and ruled that the strike insurance plan actually advanced the objectives of the Act. The Court reasoned that strike insurance helps to equalize respective bargaining positions which prevents "unreasonable demands" from "being made upon one who might have to capitulate because of financial exigencies with no opportunity to bargain on an equal basis."[61] Also, since benefits were only paid if a union violated the Act or sought to secure demands that exceeded the recommendations of duly appointed Boards, it was ruled that the agreement actually encouraged industrial peace.[62] Hence, Judge Ryan concluded that with respect to the Railway Labor Act:

> The strike insurance plan was not a violation of defendants' duty to bargain in good faith; indeed

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[60] W. P. Kennedy v. The Long Island Rail Road, 211 F. Supp 480 (S. D. N. Y.) 1962.

[61] Ibid., p. 487.

[62] Ibid.

> it might well be viewed as an attempt by the railroads to follow the procedures of the Act in an effort to reach a peaceful settlement and avert a strike.[63]

Concerning the charge of unilateral introduction of multi-unit bargaining, the Court dismissed the contention as follows:

> The insurance policy imposes no obligation on defendant requiring joint action or decision. . . . The Long Island's right to insurance payments in case of work stoppages covered by its policy was in no way dependent upon the popularity of the Long Island's bargaining position with other railroads.[64]

Concerning the Interstate Commerce Act, the Court held that its provisions were not applicable to the field of labor-management relations. Specifically, the Court stated:

> In short, Section 5 (1) deals with arrangements between competing railroads, to apportion business, and has no application to payments made for strike insurance.[65]

The plaintiff's charge of a *per se* violation of the Sherman Act was dismissed in a similar manner in the ruling:

> The *sine qua non* of the condemnation of the Sherman Act "restraint on commercial competition" is totally lacking in the case.[66]

Thus, all of the contentions of the plaintiff were put aside by the Court.

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[63] *Ibid.*, pp. 487-488.

[64] *Ibid.*, p. 488.

[65] *Ibid.*, p. 489.

[66] *Ibid.*, p. 490.

Furthermore, in what may prove to be more consequential insofar as the possible spread of strike insurance into other industries, the lower Court also ruled that the principle was specifically protected by both the Clayton Act and the Norris-LaGuardia Act. Judge Ryan held that:

> Here, the so-called weapon used [strike insurance] is one expressly protected by two statutes and one consistently employed by labor with no accusation of disloyal or harassing conduct.[67]

The decision given by the Court concluded:

> The strike insurance plan offends none of the statutes cited; it is found to be lawful and the complaint is dismissed.[68]

The Decision of the Court of Appeals

Following this decision, the B. R. T. appealed for a reversal to the United States Court of Appeals for the Second

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[67] Ibid., p. 487; A strong criticism of this phase of the ruling has been registered by Frank M. Tuerkheimer in "Strike Insurance: An Analysis of the Legality of Inter-employer Economic Aid Under Present Federal Legislation," in the New York University Law Review (January, 1963), p. 138. In part, he states: "Neither the Clayton Act nor the Norris-LaGuardia Act was intended to restrict the rights of labor. The fairer conclusion then is that the Clayton Act prohibition against defining labor as a commodity should be applied only in those cases involving concerted union activity. Strike insurance, an employer combination, is adverse to the interests of labor and should not be adjudged legal on the basic of language intended to protect labor." [Emphasis in original.]

[68] 211 F. Supp 491

Circuit. The union position was essentially identical to the arguments it had presented to the lower court. In addition, however, the union claimed that Judge Ryan had erred in interpreting the Clayton Act and the Norris-La Guardia Act as specifically legalizing employer strike insurance. In opposition to that ruling, the union claimed that the relevant sections of the two Acts actually "mean only that strike insurance payments or benefits to employees are to be protected."[69] The position expressed by the railroads in their brief was essentially the same as in the original case.

The Court of Appeals decided the case on June 14, 1963. With Judge Irving P. Kaufman writing the opinion, the three-man panel unaminously affirmed the decision of the lower court.[70] Concerning the provisions of the Railway Labor Act, The Court ruled:

> . . . the strike insurance plan, far from constituting a violation of the railroads' duty to bargain in good faith, was an instrument of self-help properly employed in the process of collective bargaining.[71]

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[69]"Brief . . . Plaintiffs-Appellants," op. cit., p. 32; see also pp. 25-32 [Emphasis supplied.]

[70]W. P. Kennedy v. The Long Island Rail Road Company 319 F. 2nd 366 (2d Cir. 1963).

[71]Ibid., p. 371.

The alleged violations of the Sherman Act and the Interstate Commerce Act were quickly rejected as being completely inapplicable to the labor market; the former due to Section 6 of the Clayton Act [72] and the latter because the intent of the anti-pooling section was "an expression of transportation policy solely, and not of labor policy."[73]

After labeling the union position "wholly without merit,"[74] the Court of Appeals decided not to rule upon the important question concerning the specific legality of the plan under the existing labor statutes.[75] Thus, the lower court ruling remained the final word on this major issue.

The Decision of the U. S. Supreme Court

The B. R. T. thereupon appealed the verdicts of the lower courts to the United States Supreme Court, only to lose again. In the union's petition, interestingly, the claim that the strike insurance plan violated the terms of

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[72] Ibid., p. 373.

[73] Ibid., p. 374.

[74] Ibid., p. 368.

[75] Ibid., p. 374.

the Railway Labor Act was dropped. The plea for reversal was based upon alleged violations of the Sherman Act and the Interstate Commerce Act.[76]

On October 14, 1963, the litigation came to an end when the Supreme Court denied the request for review.[77]

## Comments

The evolution of the Service Interruption Policy provides an example of the development of countervailing financial power in collective bargaining negotiations. In the decisions of the District Court and the Court of Appeals, the point was emphasized that in the strike against the L. I. R. R. both sides were heavily insulated against economic losses.[78] While the L. I. R. R. received $1,300,000.00 in insurance benefits, the 1,350 B. R. T. strikers received $158,121.54 in strike benefits from the national union and $221,514.10 in unemployment benefits under the provisions of the Railroad Unemployment Insurance Act. In addition, $721,500 [illegible] in unemployment benefits

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[76]"Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit," Entered in the Supreme Court of the United States for the October Term, 1963, p. 3.

[77]375 U. S. Reports 830 (1963)

[78]211 F. Supp. 485 and 319 F. 2nd 370.

under the Act were paid to non-striking railroad employees who were unemployed as a result of the strike. Thus, $1,101,136.07 was paid to employees affected by the strike

Like the Mutual Aid Pact, the strike insurance plan of the railroad industry represents a private economic weapon. The Service Interruption Policy, however, does not have the complete operational independence that was an attribute of the airline plan. The establishment of an Advisory Committee introduces a middle party into the benefit-receiving process. While internal goodwill considerations would seem to guarantee that the Committee will not exercise arbitrary power, the possibility of such usage does remain. For example, a small line that might not have an Emergency Board appointed in one of its disputes could have its strike declared to be not covered by the Committee should it seek a settlement contrary to a desired national pattern. Similarly, with respect to all participants, the Committee has the opportunity in future renewal years to review and to approve the daily indemnity figure submitted by each line. Here again, a recalcitrant line that may have opposed industry settlement patterns in the past could find the Committee refusing to approve an adequate indemnity figure. In that case, the railroad would be forced to accept the lower insurance figure or else withdraw completely from the protective coverage of the agreement. Likewise, in

all partial shutdowns, the coverage of the agreement and the size of the actual benefits rests solely upon a determination by the Committee. Hence, in a partial shutdown the decision by the Committee is tied closely to the issues involved in a particular dispute and the bargaining position assumed by a certain railroad. While the likelihood that the Committee would exert arbitrary pressure upon individual railroads is small, the public interest in rapid settlements dictates that any barrier in the plan that might prevent the parties to a specific strike from reaching an accord on their own should be abated. The establishment of a Board of Review could perform such a function. Without altering any of the fundamental provisions of the agreement, the creation of such a panel--possibly consisting of three non-railroad men who would be appointed for a fixed term--could hear and rule upon any appeal from a dissatisfied member which felt it was the object of industry pressure. Its very presence would probably assure that it would never be used. Nonetheless, the public interest would be served by assuring that anytime that a struck line wished to settle, it could do so without hesitancy that might stem from a fear of present or future reprisal.

There is nothing unique in the fact that the insurance was placed with a foreign insurer. Numerous American firms and industries have gone abroad to find insurance coverage for their varied undertakings. Nonetheless, the

present operation of the insurance plan differs substantially from the Mutual Aid Pact to the degree that there is no requirement placed upon the insurer or the insured to report publicly the magnitude of the actual payments and benefits. Since the passage of the Landrum-Griffin Act, virtually all union financial activities--including strike benefit programs--are subjected to federal scrutiny and public inspection. Likewise, in order that the role of the Service Interruption Policy may be more effectively evaluated in specific disputes, it is in the public interest that the railroad industry be required to submit similar ex post reports to the I. C. C. The reports should itemize the disputes in which such payments are involved, the amount received by the struck line, and the amounts paid out by each of the other non-struck railroads. In the ariline industry the C. A. B.--which is essentially concerned with product market considerations--requires that all payments and receipts from the Pact be reported even though the subject matter is entirely one of labor relations. There is no reason why the I. C. C. could not invoke a similar requirement. The grounds for I. C. C. intervention are plentiful. Since many railroads have up until the most recent years claimed to be in financial doldrums, the assumed liability that each member railroad accepts when it joins the agreement of upwards to twenty times its own daily

indemnity certainly raises the issue of solvency ramifications. Solvency affects competition in the industry which is a matter of direct concern for the I. C. C.

As for the railroad that might find it more profitable in the short run to be struck than to continue to operate at a loss, such an event is quite possible but certainly not very probable. If an Emergency Board were appointed in the dispute, the line would be eligible for benefits only if the union should strike to secure terms exceeding the recommendations of the Board. Hence, the firm could not seek insurance benefits as a method of minimizing losses as a positive policy objective. Also, there are many other indirect costs to a struck line that are not covered by the policy. Some of these uninsured costs are damage to goodwill; permanent losses of customers to other forms of transportation; costs of returning to full operation once the strike has ended and the benefits cease; and the undoubted ill will that would develop among the other railroads that would be financing such a practice. Nevertheless the possibility does indicate the need for public awareness.

With respect to the legal test, the courts have ruled without reservation that strike insurance itself is not illegal under existing statutes. Concerning the question as to whether or not strike insurance is specifically protected

by existing provisions of the Clayton Act and the Norris-LaGuardia Act, the issue has not been completely resolved. While the District Court concluded that it was protected, the Court of Appeals refrained from ruling on this point. Consequently, the significance of this section of the decision is weakened as a future citation in any other legal attacks upon the principle of strike insurance. It appears to this writer that the District Court interpreted the word "insurance" as it appears in the Norris-LaGuardia Act in the broadest possible manner. For in examining the actual operational provisions of the plan, it is impossible to find any element of commercial risk.[79] The insurer can not lose a single cent. All benefits are paid by assessing the non-struck lines. The insurer actually is paid solely to perform the administrative task of acting as an intermediary transfer agent. Moreover, "insurance" in its more standard usage implies an event which is shrouded with a degree of uncertainty. For the Service Interruption Policy to qualify as a true form of insurance would imply that management is absolutely helpless and has no control over the process of collective bargaining. It is doubtful that this is the case.

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[79]See "Railroad Strike Insurance Plan Explained to Buyers at A. M. A. Meet," The National Underwriter (Novermber 13, 1959), p. 1 for a discussion of this point which concurs with my own conclusion.

A railroad company always has the alternatives of accepting the complete demands of a union or, more likely, of haggling, within a certain range without fear of a strike. This partial control over the outcome certainly poses doubt about the pure insurance aspects of the plan. While the terms Service Interruption Policy and strike insurance are used interchangeably, it is questionable whether or not they are synonymous.

Nevertheless, the fact remains that the issue as to whether or not strike insurance is specifically protected by the Clayton Act and the Norris-LaGuardia Act is really only an academic question. The courts have authoritatively determined that the Interstate Commerce Act, the Railway Labor Act, and the Sherman Act do not prohibit the industry's strike insurance plan. The railroads may do what the law does not prohibit them from doing; the industry does not need a law saying that they may have strike insurance.

# CHAPTER III

# THE "SUSPENSION INSURANCE" PROGRAM IN NEWSPAPER PUBLISHING

## Introduction

Unlike the public revelations of the details of the parallel strike subsidy programs in the airline and railroad industries, the strike insurance plan in the newspaper publishing business--commonly referred to as "suspension insurance"--has not been the subject of a detailed public investigation. While many details of the program--obtained through a variety of channels--have become public information, management itself regards the program as being strictly a confidential matter. One business publication has commented as follows on its attempt to secure information directly from the publishers association:

> Officials connected with the fund [i.e., the Newspaper Publishers Premium Fund] refuse to discuss it on the ground that the insurance is a private matter between the newspapers and the insurance carrier.[1]

My efforts to obtain information directly from the publishers association met a similar response.[2]

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[1] "Teamwork Cuts Strike Losses," Nation's Business (July, 1960), p. 78.

[2] In a confidential interview with a representative of the American Newspaper Publishers Association, the main reason cited by the official for their preference for secrecy

## A Brief Review of Industrial Relations in the Industry

In the daily newspaper publishing business, collective bargaining has long been the prevailing method for resolving issues concerning labor management relations. Indeed, the International Typographical Union (I. T. U.), founded in 1852, is today the oldest national union in the country. Until 1889, all of the printing trades were included within the ranks of I. T. U. With industry expansion and the growth of specialization associated with the introduction of new processes, several crafts split away and established their own unions. Currently, there are four major craft divisions in the industry. These are the typographers, the pressmen, the photoengravers, and the stereotypers and electrotypers. In addition to these specialized crafts, there are also the mailers who handle the bundling and wrapping of the newspapers and the teamsters who distribute them. Of the estimated 160,000 production workers presently employed in the industry, about ninety per cent belong to unions. As for the non-production workers, the establishment of the American Newspaper Guild (A. N. G.) in 1933 was one of the earliest successful organizing campaigns of white collar workers in

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about virtually every facet of the agreement was that the association adheres to a philosophy that the less the unions know about employer bargaining tactics the better the employers like it. I was denied permission to quote him directly or to cite his name.

the nation. Over half of the editorial department employees and approximately a quarter of the commercial department employees in the industry are represented by A. N. G. In 1959 A. N. G. had 30,000 members. Thus, as in the railroads and airlines, a high degree of organization and multiple unionism are important characteristics of the industrial relations environment.[3]

As was true of those industries, the presence of multiple unionism greatly increases the exposure of the industry to strikes. The multiplicity of negotiation sessions, contract expiration dates, jurisdictional conflicts, and strike threats is a constant threat to stable industrial relations practices. An actual strike by any one of the unions can shut down the entire operation.

Production wages (which excludes editorial commercial department employees) account for approximately twenty-five per cent of total production costs. Production wages, however, are about half of the total wage bill for all employees in the industry.[4] When all costs are considered, the industry produces continually in the range of decreasing average

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[3]Aside from the references to current figures, much of the descriptive material of this paragraph is drawn from Robert K. Burns, "Daily Newspapers," How Collective Bargaining Works (New York: The Twentieth Century Fund, 1942), pp. 39-40 and 108-111.

[4]Ibid., pp. 35-36.

costs.[5] Increased circulation does not affect the man-hour requirements for typographers, photoengravers, and stereotypers. As for the pressmen, mailers, and teamsters, increased production actually tends to reduce man-hour requirements because greater economies in equipment and technique can be introduced as the scale of production is enlarged.[6]

Production under conditions of decreasing unit costs is, by definition, inconsistent with the survival of competitive conditions. Since most cities currently have at least one daily newspaper, the only route by which increased economies can be achieved--aside from simply growing with the rate of area population increase--is through consolidation. Consequently, competition in the product market has been rapidly dwindling. From its apogee of 2,461 dailies in 1916,[7] the number has fallen to 1,761 in 1961.[8] Moreover 95.7 per cent of the American cities that had a daily

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[5]Ibid., p. 36; see also Theodore J. Kreps, "The Newspaper Industry," The Structure of American Industry (third edition), (ed.) Walter Adams (New York: The MacMillan Company, 1961), pp. 515-516.

[6]For a discussion of the technological advances that larger circulation makes possible, see American Newspaper Publishers Association, Newspapers 1963, A Presentation to the Antitrust Subcommittee of theHouse Judiciary Committee, 1963 (Washington, D. C., 1963), pp. 351-374.

[7]Burns, op. cit., p. 33.

[8]A. N. P. A. op. cit., p. 145.

newspaper in 1958 were one publisher towns.[9] The consolidation trend has had a double edged effect upon collective bargaining. On the one hand, it has meant a stronger financial structure for the surviving firms which allows for a more secure bargaining atmosphere. On the other hand, the decrease in the number of firms has reduced employment opportunities in many areas which has aroused apprehension in many union quarters.

The respective international unions in the industry have historically assumed a supervisory role over the negotiation powers of their member locals. Besides requiring approval of final contract terms negotiated by locals and approval of a strike before benefits can be paid from the national treasury, the internationals typically specify minimum conditions that must be met in all local agreements; require that the demands to be offered by the local to employers be approved by the international prior to actually being submitted; and guarantee and underwrite the enforcement of contract terms.[10]

Publishers vary as to the negotiation method employed. In the larger cities, bargaining is generally conducted through a local association of publishers. Typically, the

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[9]Kreps, op. cit., p. 510.

[10]Most of the information cited in this paragraph is drawm from Burns, op. cit., pp. 42-43.

local association will employ a full-time labor expert who actually bargains with the respective unions. The local expert is always able to draw upon any information and resources available from the industry trade association--the American Newspaper Publishers Association (A. N. P. A.). Outside the larger cities, the publishers often form state or regional publisher associations. The role assumed by these regional associations in bargaining matters differs widely. While often supplying statistical information and employing a labor relations expert to advise the members, these regional associations do not negotiate contracts for all of their participants as do their city counterparts. Hence, some newspapers bargain and sign contracts on a regional basis while others do so on an individual basis. A. N. P. A. membership in 1963 consisted of 873 daily newspapers which accounted for better than ninety per cent of the daily and Sunday newspaper circulation of the nation.[11] The main function of the A. N. P. A. in the labor relations area is to gather, organize, and disseminate industrial relations information to its members.[12]

In recent years collective bargaining has been hampered by several developments. Despite the financial strengthening

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[11]A. N. P. A. op. cit., p. 3; also, see footnote 2.

[12]Most of the information in this paragraph is drawn from Burns, op. cit., pp. 43-47.

that has occurred due to consolidation, the rise of competing news media for advertising dollars had adversely affected the revenue figures of many of the surviving dailies. Similarly, many city papers have been troubled by the expansion of suburban retail businesses and the decline of their principal advertisers which have been the larger downtown stores. Another major factor has been the rapid and extensive technical advances that have been introduced in the post-war years. This development has substantially increased the fixed costs of the publishers. Consequently, the foreseeable losses associated with a shutdown period have markedly risen in recent years. Also, as was the case in the airline and the railroad industries, the service provided by the industry is extremely time sensitive. The possibility of recouping strike losses once a settlement has been achieved is practically nil.[13]

In summary, to employees the postwar period has brought a relative decline in employment opportunities and increased controversy over traditional job practices. To employers, the likelihood of strikes has been notably increased and anticipated revenues have often failed to materialize. Out of these growing difficulties came the strike insurance plan.

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[13]Most of the information in this paragraph is drawn from A. N. P. A., op. cit., pp. 4-6, 25-26, and 351-374.

## The Establishment of the Suspension Insurance Program

Strike insurance in this industry is actually the forerunner of all management strike subsidy devices. The development of strike insurance by newspaper publishers dates back to the 1920's when it was possible to purchase such policies directly from several American insurance companies. Most of these companies did not survive the depression of the 1930's.[14] There have been recent disclosures, however, that reveal that some form of continuous coverage for a few dailies has been in existence since the thirties.[15]

The actual establishment of the plan which is today referred to as "suspension insurance" dates back to the late forties.[16] While rumored to exist, actual public confirmation of the operation of the program did not occur until 1953 during the course of a strike against the Seattle Times. Mr. Charles Lindemand, publisher of the rival Seattle Post-Intelligencer--which was also participating in the joint contract renewal negotiations with A. N. G., but which was not struck at the time--remarked about the existence of a strike insurance program in the Times dispute to

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[14]See footnote 2.

[15]H. Howard Ostrin, "Strike Insurance," The Nation (March 19, 1960), p. 250.

[16]"Strike Insurance Widely Adopted," New York Times (September 9, 1960), p. 62; also, see footnote 2.

Mr. G. D. Conner. Mr. Conner was publisher of the Pacific Northwest Underwriter, a regional insurance magazine, and he printed a brief account of the plan. The story was quickly followed up and investigated by Advertising Age and by the Guild Reporter. Both publications subsequently printed the results of their limited findings.[17] By 1955, Fortune reported that "almost every major daily in New York as well as in other cities carries strike insurance."[18]

On June 30, 1955, at the Twenty-Second Annual Convention of the American Newspaper Guild, the Guild adopted a resolution calling for an inquiry into the legality of the use of strike insurance in general and in a strike against the Brooklyn Eagle in particular.[19] The following year, partly as a result of the resolution, an important ruling was made. In May, 1956, ten insurance companies in New York had filed their rates with the State Superintendent of Insurance, Leffert Holy.[20] A ruling on the compatibility

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[17]"Publishers' Strike Insurance Operation Revealed; $3 Million are on Tap in Fund," The Guild Reporter (September 11, 1953), pp. 1 and 3.

[18]"Strike Insurance," Fortune (April, 1955), p. 82.

[19]"Re Strike Insurance," Memorandum of Mr. Max Pyle, Associate Director of Research and Information, American Newspaper Guild, Washington, D. C. (October 14, 1959), pp. 6-7. (Hereafter referred to as "Pyle Memorandum.")

[20]At that time the insurance was available for purchase either from American firms or through representatives of Lloyds of London.

of strike insurance with the insurance laws of the state was requested of the Attorney General of the State, Jacob K. Javits. On August 2, 1956, after a very short investigation, Javits wrote the following to the Guild:

> Upon investigation, this office learned that insurance against business losses due to strikes did exist and was being made available to members of the American Newspaper Publishers' Association.
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> The material which this Department has acquired in course of the investigation, including copies of the insurance policies then in use, was referred to the State Department of Insurance. On July 26, 1956, I was advised by that Department that the filings of each insurance company involved were rejected on the ground that approval of such coverage would be contrary to public policy.[21]

Since in the United States, insurance laws and regulations are established and administered by individual states, the effect of the prohibition by the State of New York--the only state to date to do so--was that the Newspaper Premium Fund Committee "merely transferred its insurance to other companies,"[22] which were not franchised by the State of New York but which, nevertheless, could operate within the state. For the next few years the program was administered by the Newspaper Premium Fund Committee with the funds being

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[21]Letter from Hon. Jacob K. Javits, Attorney General of the State of New York, to Mr. William J. Farson Secretary-Treasurer, American Newspaper Guild (August 2, 1956). Original copy is on file in the Washington, D. C. office of the guild.

[22]"Says Strike Insurance Against Public Policy," Editor and Publisher (August 18, 1956), p. 66.

shifted to a Canadian firm--the Montreal Trust Company--and the plan being underwritten by Lloyds of London through their legal representative in New York--Mendes and Mount.[23]

The actual operational details of the program were unknown to the public until the American Newspaper Guild acquired in March, 1959, a confidential memorandum dated May 29, 1958, which had been circulated by the Newspaper Publishing Premium Fund Committee.[24]

## The Provisions of the Plan

The Memorandum of 1958 revealed the specific nature of the administration and coverage of the strike insurance program. The plan--"a group plan limited to risks selected by the Underwriter"[25]--is open only to members of A. N. P. A. From the membership of A. N. P. A. a committee "was set up by the newspaper publishers interested in insurance covering losses that publishers may suffer as the result of business, interruptions caused by strikes."[26] This committee was and is known as the Newspaper

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[23]Memorandum from the Newspaper Publishing Premium Committee to the Members of the American Newspaper Publishers Association" (May 29, 1958), pp. 1 and 5. (Mimeographed copy obtained from the American Newspaper Guild office in Washington, D. C.) [Hereafter referred to as "Memorandum of 1958."]

[24]Ibid., pp. 1-7; also see "Strike Insurance Details Bared in Publishers Assn. Prospectus," The Guild Reporter (March 27, 1959), pp. 1 and 2.

[25]"Memorandum of 1958," op. cit., p. 1.

[26]Ibid.

Publishing Premium Fund Committee and it currently represents the approximately 430 participating dailies.[27] The committee is not a standing committee of the A. N. P. A.--which by the way disavows any association at all with the strike insurance program[28]--but, rather, it is an autonomous committee whose membership is composed solely of A. N. P. A. members selected by the newspapers which are adhering to the strike insurance program. The function of the committee is to advise the participating publishers on the administrative aspects of the plan and to negotiate with the underwriter for the most suitable provisions for operation and coverage.

The benefits of the plan are available for both total and partial shutdowns and could be used to cover "fixed charges," "expenses that cannot be eliminated during partial suspension," and "profits that the insured is prevented from earning."[29] The benefits are available as of the eighth day after a covered strike begins. Using the figures that are revised from those outlined in the Memorandum of 1958,[30] a struck daily can insure up to an amount equaling $11,000 per day, beginning with the eighth day of the

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[27]"Insurance Helps--a Little," Business Week (December 22, 1962), p. 19.

[28]See footnote 2.

[29]"Memorandum of 1958," p. 2.

[30]"Insurance Helps . . . ," op. cit., p. 19.

strike. The maximum aggregate coverage that any single daily can receive is $550,000. In addition, a total ceiling of $2,250,000 is set on the total amount of benefits that can be paid to any one city or to all newspapers which are signatories to any one labor contract as the result of any one strike. A provision is also made for an extra Sunday indemnity which is available for an extra charge. The plan includes payments to publishers who lock out their employees because of a strike against another paper in the same city. Each paper has its choice between coverage for up to 25 days or to 100 days.

The cost of the insurance to each publisher is as follows:[31]

| Indemnity Period | Annual Premium for each $100 of per diem Indemnity | Annual Premium for each $100 of Extra Sunday Indemnity |
|---|---|---|
| 25 days | $135.00 | $12.30 |
| 100 days | 225.00 | 20.30 |

The following is an example for a hypothetical strike situation:

| Subject: | One daily newspaper that has a weekday and Sunday edition | |
|---|---|---|
| Per Diem Indemnity (1) | $7,000 | 7 days per week |
| Extra Sunday Indemnity (2) | $5,000 | |

[31]The figures for the daily per diem premium are from ibid., p. 19; those for the extra Sunday coverage are from the "Memorandum of 1958," op. cit., p. 4.

Period of Coverage 100 days

Computation of the cost:

(1) $225.00 (cost per hundred dollars for 100 days)
X 70 (number of hundreds of daily coverage)

= $15,750.00

(2) $ 16.35 (cost per hundred dollars for extra Sunday indemnity)
X 50 (number of hundreds of extra Sunday coverage)

= $ 817.50

Total Annual Premium = $16,567.50

Thus, it can be seen that premium payments vary in proportion to the amounts of indemnity and that once set the premium is a fixed amount which is not subject to increase by assessments.

Currently, the plan is administered by the Mutual Insurance Company, Limited, of Hamilton, Bermuda. Additional underwriting is provided by Lloyds of London.

In order to collect the benefits, each newspaper must offer to arbitrate disputes with the exception of bargaining

> differences arising from or concerning news and editorial department reporters and writers, welfare or pension plans, the union shop, maintenance of membership, or the closed shop--except to the extent that provisions relating to these matters are included in contracts already in force or voluntarily entered into during the period of insurance.[32]

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[32] "Memorandum of 1958," op. cit., p. 5.

Arbitration has had a long and varied history in this industry.[33] Beginning in 1901, arbitration became the standard method of settlement of disputes arising from contract interpretation of agreements between A. N. P. A. and I. T. U.[34] In 1902, wages and hours provisions of new contracts were added to the included list. In 1903, working conditions and shop rules--other than rules established by the international--became arbitrable topics. The three other major craft unions soon afterward signed similar agreements with A. N. P. A. This was the pattern until 1922 when the international arbitration agreements ceased. The main cause of the breakdown was a dispute between A. N. P. A. and the pressmen, stereotypers, and photoengravers over whether international union rules should be included as arbitable topics. A. N. P. A. said they should; the crafts said they should not be. In 1922 A. N. P. A. took the firm position that hereafter all international arbitration agreements "must provide for unrestricted arbitration of all issues affecting both employee and publisher interests."[35] The typographers then joined the other three internationals in refusing to accede to this

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[33]Burns, pp. 50-64. The remainder of this paragraph is based largely upon the material cited in this reference.

[34]Between 1901-1907, arbitration was compulsory for local unions but voluntary for local publishers. In 1907, arbitration became voluntary for local unions if the publisher with which they bargain had not signed an agreement to arbitrate prior to a specific dispute. Ibid., p. 55.

[35]Ibid., p. 57.

position. Since 1922, however, voluntary arbitration has often been employed in various disputes in the succeeding years up to the present.

Actions Taken by the Newspaper Unions

As mentioned earlier, the initial action taken by the newspaper unions was the A. N. G. resolution at its 1955 convention. Soon afterward came the ruling by the State of New York that the program was "contrary to public policy." On the national level, the Guild sought a ruling by the U. S. Department of Justice in 1955 on the anti-trust implications of the plan. No action was taken on the request.[36]

In a strike against the Ridder newspapers in St. Paul, Minnesota in 1958, the local Guild claimed that strike insurance was involved and that its usage constituted an unfair labor practice. No official complaint was filed. Nonetheless, as a result of a subsequent resolution passed by the local Guild, the two U. S. Senators from the state--Hubert Humphrey (D) and Edward J. Thye (R)--forwarded copies of the resolution to the Senate Select Committee on Improper Activities in Labor or Management Relations (the McClellan Committee) for study as a questionable

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[36] "Pyle Memorandum," op. cit., p. 8.

management tactic.[37] The matter, however, was not taken up by the Committee.[38]

On the West Coast, a long and controversial strike began in late 1959 against the Oregonian and the Oregon Journal in Portland, Oregon. The two papers continued to operate despite the strike. The strike was an exceptionally bitter one. Both sides frequently charged the other with the usage of alleged unfair tactics--one of which was suspension insurance. The culmination of these charges was the introduction, on February 15, 1960, of a resolution in the U. S. Senate by Senator Wayne Morse (D) of Oregon. The resolution contained the following relevant passage about the industry's assistance program:

> . . . Whereas it also appears that in order to escape their duty of settling labor disputes by the process of free collective bargaining certain newspaper employers, as a strike-breaking device, have subscribed to so-called strike insurance policies, some of which have been negotiated outside the United States and
>
> Whereas it further appears that the employment of such strikebreaking devices is becoming an established pattern among newspaper employers to circumvent the orderly process of free collective bargaining as a means for the settlement of labor disputes: Now, therefore, be it
>
> Resolved, that the Committee on Labor and Public Welfare, or any duly authorized subcommittee thereof,

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[37] Ibid., pp. 9-10; see also "McClellan Committee Looks at 'Strike Insurance'," Editor and Publisher (February 1, 1958), p. 16.

[38] For a caustic comment concerning this development, see Ostrin, op. cit., p. 252.

> is authorized. . . to examine, investigate, and make a complete study of the extent to which newspaper employers who are involved in labor disputes with their employees have adopted the practice . . . of subscribing to so-called strike insurance as a means of coercing their employees and otherwise subverting the process of collective bargaining. . .[39]

The resolution requested a report from the committee by January 31, 1961. The resolution, however, "was never acted on and died in the Senate Labor and Public Welfare Committee."[40]

Earlier, as a result of the Oregon dispute the Guild had again requested on October 28, 1960, that the U. S. Attorney General rule on the legality of strike insurance.[41] The Department of Justice, however, did not respond to the request.[42]

## The Quandary of the Unions

Despite their outward indignation for the insurance program, the unions which negotiate with the newspaper publishers have never seriously challenged the legality of the plan in a court of law. The basic reason is that the

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[39] U. S. Congressional Record, Vol. 106, Part 2, pp. 2498-9 (Senate Resolution 271).

[40] Letter from Senator Morse to this writer, September 30, 1963.

[41] Russell Porter, "Newspaper Guild Asks U. S. Inquiry," New York Times (October 29, 1960), p. 27.

[42] Letter from Mr. Herbert J. Miller, Jr., Assistant Attorney General of the United States, to this writer, December 30, 1963.

unions find themselves in an ideological dilemma. Its nature can be seen by contrasting the following portions of an exchange of letters between Mr. A. Andras, Director of Legislation of the Candaian Labour Congress, and Mr. Ellis T. Baker, Director of Research and Information of the American Newspaper Guild. In his initial letter, Mr. Andras writes:

> . . .I must confess a dilemma and I turn to you in hope that you may be able to clear it up for me. It strikes me that it is somewhat difficult to argue against an employer strike insurance fund when unions have traditionally built up strike funds of their own. If an employer strike insurance fund "does violence to the concept of bargaining in good faith," presumably the building up of a large strike fund by a union like the U. A. W., for example, might be open to the same charge. . . My concern is that if the Canadian Labour Congress itself or its provincial (state) Federations are to make respresentations, they should not be taunted with the charge of the pot calling the kettle black.[43]

In his response to the query of Mr. Andras, Mr. Ellis replied:

> . . . I too have difficulty in distinguishing between strike insurance and strike funds, except as strike insurance may be subject to governmental regulation peculiar to insurance as in New York.
>
> Despite the resolution of our recent convention, our counsel believes that there is little hope of effectively getting at strike insurance in the U. S. through labour-relations or antitrust laws. He believes that a valid sociological distinction can be drawn between our modest combination of resources and those of the publishers (which are combinations

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[43]Letter from Mr. Andras, dated October 2, 1961. [The letter is contained in the files of the Guild Office in Washington, D. C.]

> of capital), but he seriously doubts that since the passing of Louis Brandeis anyone can be found to draw such a distinction, least of all within the personnel of the National Labor Relations Board or its state counterparts.[44]

Thus, the fear that an attack upon the strike insurance scheme of management could lead to a retaliatory move by employers on union strike funds or, more likely, to a charge of hypocrisy, has resulted in an acquiescence by the newspaper unions to the maintenance of suspension insurance within the publishing business. Likewise, the recent decision in the railroad case has undoubtedly reinforced the feeling of futility about any effort to attack the plan under the existing labor statutes. Consequently, there is nothing to indicate a change in the position of either labor or management with regard to the existence of strike insurance in the newspaper publishing business within the foreseeable future.

## Comments

The development of suspension insurance in the newspaper publishing business is significant for at least one major reason: to date it represents the most extensive attempt of employers in a non-regulated industry to establish a mutual financial assistance agreement. The important point, however, is not that such a device has

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[44]Reply letter from Mr. Baker to Mr. Andras, dated October 20, 1961, ibid.

become operative in a non-regulated industry; rather, it is of consequence to note the similar characteristics of the bargaining structure in the industries which have developed these programs. As will be developed in the conclusions to this study, all of these industries are characterized by multiple unionism, a high degree of strike exposure, rapid introduction of technological change in recent years, rising fixed costs, and a time sensitive service that limits the ability to recoup strike losses.

There is, however, one major distinction between the functioning of the newspaper plan and those in the airline and railroad industries. In the case of the latter two industries, labor relations are closely regulated by the Railway Labor Act. Consequently, the mutual assistance programs are closely associated with the functioning of the Act. For a firm to receive benefits, it is usually necessary that the striking union violate the terms of the Act or strike against terms recommended by an Emergency Board. In the newspaper industry, the major applicable legislation is the National Labor Relations Act, as amended. With the possible exception of the national emergency provisions, this Act does not specify any comparable procedures to the Railway Labor Act for securing a settlement in a dispute. Hence, the operation of the newspaper program has no direct dependence upon any existing labor statutes. In fact, the only requirement to receive benefits is that

the firm must offer to arbitrate the disputed subjects and any other issues that it unilaterally designates for inclusion in the arbitration offer. In order that the true significance of the impact of this plan in specific situations can be effectively evaluated (a task which is currently impossible), minimal ex post reports should be required. These reports should contain a statement of the incidents in which such funds are involved and the amount of funds received by the struck party. The employer-reporting sections of the Landrum-Griffin Act[45] should be amended to require that these reports be filed with the Bureau of Labor-Management Reports of the Department of Labor. Accordingly, the reports would be available for public inspection and study. Such a requirement would differ in no meaningful way from the present requirements imposed by the Act on the reporting of union strike benefit payments.

On the positive side, suspension insurance possesses several virtues that distinguish it from the other plans discussed. One feature is that there is no contingent liability on the other participants when any member is struck. Each firm, if it elects to take part, pays only its established premium for the year. As a result, the limited liability feature eliminates the possibility that a financially-hard-pressed firm could be contractually

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[45]Section 203.

obligated to provide additional funds above the premium amount to a struck participant. Each newspaper knows the exact cost of participation prior to its decision to seek coverage. The limited liability feature, however, has meant that the annual premium amount must be set quite high. This costliness of the program, consequently, raises the serious question concerning the possibility that the financially weakest firms in the industry may not be able to participate and are left vulnerable to the full economic impact of a strike. Unfortunately, since the membership lists are not public, it is impossible to assess the full significance of this question. Another feature of the plan is that it is basically self-operating. The relationship--unlike the railroad plan--is strictly between the struck carrier and the insurance company. While the exact coverage, verification, and payment processes are not public, it appears that there is little opportunity for any third party to become involved in the eligibility-for-benefits process.

In general, it is improbable that suspension insurance, by its presence, has served to enhance the likelihood of strikes occurring in the industry. The seven day waiting period in which no benefits are payable combined with the fact that the high fixed costs are only partially covered--and then only up to a limited amount and for a limited period--would seem to assure that a publisher would always

prefer to continue operations. Moreover, it is possible that the plan--by offering a limited amount of countervailing funds to the widespread usage of strike benefits by the unions in this industry--may decrease the likelihood of some strikes actually occurring. In either case, it seems doubtful that suspension insurance itself contributes in any significant way to employer intransigency at the bargaining tables.

# CHAPTER IV

# RELATED DEVELOPMENTS IN OTHER INDUSTRIES

## Introduction

Since the public pronouncements concerning the formal agreements between the firms in the airline, newspaper, and railroad industries for assistance in the event of a strike against a participating member, variations of these programs either have come into existence or have been studied by other industries. In some instances the programs have been instituted and operational for several years; in others, related proposals have been thoroughly investigated and subsequently rejected as being either infeasible or undesireable; while in still other situations, similar plans are currently under study for possible implementation at a later date.

## Management Assistance Plans in Operation

### Hawaiian Sugar Industry

In 1956, twenty-six sugar plantation owners on the Hawaiian Island were faced with a threat of an industry-wide strike stemming from a dispute with the International Longshoremen's and Warehousemen's Union which represents

the field, processing, and transportation workers. As a result, the twenty-six plantations--working through the Hawaiian Sugar Planters' Association--adopted a mutual strike support plan--sometimes referred to as "production insurance." The threatened strike was averted in 1956 but in early 1958 an industry-wide walkout that lasted for four months did occur and the insurance plan, consequently, was put into operation.

The plan is unique in that it does not serve to cover losses due to the strike to the current sugar crop; rather, it is designed to aid in the coverage of damage sustained to future crops as a result of the original strike--in this instance, the damage sustained in 1959 and 1960.[1] The strike in 1958 "was 100% effective" in that the sugar owners made no effort to do any work on their plantations. The owners did "no harvesting, weeding, fertilizing, rodent control, or--most important of all--irrigation."[2] Since the sugar cane crop in Hawaii is allowed to grow for two years before harvesting, the strike was seen to have caused a serious dislocation of planting and harvesting schedules which would take several years to correct adequately. Due to locational differences,

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[1] "Strike Insurance Plan Gets Test," Business Week, (June 28, 1958), p. 95; see also, "Teamwork Cuts Strike Losses," Nation's Business (July, 1960), p. 79.

[2] "Strike Insurance Plan Gets Test," op. cit., p. 95.

the impact--especially the lack of irrigation in the dry areas--was unevely distributed among the plantations. In fact, it was the "recognition of this abnormal variation of risk in a strike [which] brought about the mutual support plan" that was "devised to correct some of the inequities imposed by industry-wide bargaining."[3]

Operationally, the plan is referred to as a form of deductible insurance. The losses in the actual strike period are excluded from coverage but production losses for up to six years afterward are covered. Each one of the twenty-six plantations has established a normal annual production figure for itself. Following the strike year, the first one-third of the normal annual production figure is excluded from coverage--hence, the reference to deductible insurance--while the amount of losses sustained beyond this figure is compensated for at the rate of $.75 on the dollar.[4] For example, one plantation may have established and have had mutual agreement that its normal annual production figure is 30,000 tons of sugar cane. Its production can fall by one-third--to 20,000 tons per year--the year following a strike with the reduction in output being ascribed to a "labor distrubance"--and the plantation owner would receive nothing from the strike plan.

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[3] Ibid.

[4] Ibid.; see also "Teamwork, . . .," op. cit., p. 79.

If the figure should fall to, say, 15,000 tons for the year following the strike, the plantation would be entitled to an amount equal to seventy-five per cent of the dollar value of the 5,000 tons of sugar that were lost beyond the one-third of production deductible figure. The dollar value would be made up by an assessment on all of the twenty-six plantations (including the loss-reporting firm) and it would be payable in installments over future years. There is no record available as to the amount paid out to date under this plan.

California Agriculture

Following a two year organizational drive by the A. F. L.-C. I. O. to organize farm employees in California, an Agriculture Interinsurance Exchange representing numerous grower organizations was established in May, 1961.[5] The original agent for the indemnification policy was the Sutter Holding Company of Yuba City, California.

The plan envisions benefit coverage of up to seventy-five per cent of the expenses incurred for the proportion of the crop insured. The premium rates are based on the crops which are to be insured. Premiums on peaches, pears, tomatoes, prunes, and several other fruit tree crops were

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[5]"Strike Insurance is Offered California Farmers," Wall Street Journal (June 15, 1961), p. 1.

set at $1.50 per $100 of insurance; hops, melons, lettuce, and other truck crops were set at $2.00 per $100 of insurance; and sugar beets, walnuts, almonds, and "other crops which involve less hand labor" were set at $1.00 per $100 of insurance.[6] These premium charges together with the associated benefits cover only the established proportion (75%) of actual charges and expenses associated with the production of the covered crops themselves. Additional transportation expense coverage may be added to the basic policy for $.50 per $100 of insurance and processing expense coverage can be added for an additional $2.00 per $100 of insurance.[7] Hence, as an illustrative example, a farmer could purchase production insurance for a set amount of crop acreage--say fifty acres of peaches--which has an anticipated amount of production expenses--say $10,000. The farmer, accordingly, could purchase insurance on his peach crop acreage up to the amount of $7,500 for the premium charge of $112.50 (i.e., $1.50 x 75). For a total premium of $225, he could purchase additional protection coverage against loss caused by strike interference at the cannery with the processing of the insured crop. The insurance plan, however, "does not insure against loss of profits from the crop."[8]

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[6]Jacqueline Stanton, "Strike Insurance Plan Here," Marysville (Cal.) Appeal-Democrat (May 23, 1961), p. 1.

[7]Ibid.

[8]Ibid.

In the event that widespread losses were sustained as the result of a strike and depleted the insurance reserves, each farmer member would be liable for an additional assessment up to the total amount of his original insurance premium. While there is no public information concerning the total amounts actually paid out, the original insurance reserves totaled only about $100,000.[9]

There was one important prerequisite required of all farmers who wished to participate in the program. Namely, every member of the plan must "pay prevailing wage rates and. . .comply with all applicable laws, rules, wage rates and. . .comply with laws on employment, wages and hours, safety and housing, and working conditions"[10] to be eligible for participation in the program.

## Management Assistance Plans Under Consideration

### The Trucking Industry

Through the industry trade association, The American Trucking Association (A. T. A.), the possibility of establishing some form of mutual strike assistance has been under study for a number of years. On February 12, 1960, Mr. Benjamin R. Miller, Director of Industrial Relations

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[9]"Strike Insurance is Offered California Farmers," op. cit., p. 1.

[10]Stanton, op. cit., p. 1.

for the A. T. A., gave an address before the Regular Common Carrier Conference which met in Bal Harbour, Florida.[11] In this address, Mr. Miller indicated a strong interest in the establishment of some sort of strike insurance program. At the same time, however, he was quick to point out the many difficulties that could conceivably result from attempts to introduce into the trucking industry any of the plans already in operation in the airline, newspaper, and railroad industries. Thus, his position was that:

> . . . Service interruption insurance may be a moderate means of changing the imbalance at the bargaining table of the trucking industry. But I must tell you it may not be the panacea that some think. If it were a hundred per cent effective, you might create exactly what came from the steel strike--a national emergency. And you would have the Congress again saying: "We can't stand such strife in this Nation; the government has to intervene." Any maybe we would have gone around the complete circle, back to government intervention and compulsion.[12]

From this position he concluded that:

> Let me leave you with the idea that we've been working on it, we'll continue to work on it and we hope to get your support in what will evolve as some conclusions from deep research and intelligent application to the practical problems that these matters might create.[13]

While the address by Mr. Miller did not set forth any particular details of how such a program would be established

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[11]Benjamin R. Miller, "New Developments in Labor Relations--A Discussion of Service Interruption Insurance," (February 12, 1960), pp. 1-10. (Reprint)

[12]Ibid., p. 10.

[13]Ibid.

in the trucking industry, it is indicative of the fact that the concept does contain an element of appeal to the industry. More recently, Mr. Robert E. Grindle, Assistant to the Director of Industrial Relations of A. T. A., stated that:

> The subject is still being explored, but thus far no plan has been approved for use by this industry. . . . The status of this matter remains substantially the same [as that stated in the address by Mr. Miller]. . . .[14]

Thus, while the subject may not be completely dormat, there does not seem to be any urgency associated with the development of such a program. With respect to the signing in 1964 of the first industry-wide contract between the Teamsters and the industry, it is too early to appraise the effects of this event upon the development of a strike subsidy program.

The Commercial Printing Industry

Consideration by the Printing Industries of America (P. I. A.) of a form of strike insurance began in earnest during the latter part of 1962.[15] In fact, at a meeting held late in 1962 in Montreal, Canada, of the Union Section of P. I. A., it was announced that the plan was available

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[14]Letter from Mr. Robert E. Grindle, Assistant to the Director of Industrial Relations, American Trucking Association, to this writer, dated September 13, 1963.

[15]"Printshops Too," The Guild Reporter (January 11, 1963), p. 7.

at that time to all union shop and open shop employers who are P. I. A. members. The insurance plan is rumored to be quite similar to that of the newspaper publishers since the printers' plan would also be "underwritten by the Mutual Insurance Company Limited of Hamilton, Bermuda with additional underwriting by Lloyds of London."[16]

A condition to the actual implementation of the program was that "a 2 million dollar premium must be secured from both union and open shops BEFORE this program will go into effect."[17] The proposal, however, appears to be having difficulty achieving sufficient support in order to meet the minimum premium amount and, at last report (1963), the program itself has not been put into operation.[18]

The Steel Industry

The first indication that the steel industry was considering a mutual assistance program appeared in the industry trade publication, The Iron Age, in May, 1959. The contract between the major steel firms in the industry and the United Steelworkers was due to expire on

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[16]"Strike Insurance for Printers," A memorandum to P. I. A. employers. Reproduced in The Typographical Journal (February, 1963), p. 56.

[17]Ibid. (The underlining and capitalization appear in the original source.)

[18]"Strike Pact Deadline Extended," The I. T. U. Review (March 14, 1963), p. 4.

June 30, 1959, and, accordingly, the negotiations were approaching the "last-ditch" stage. In the May 7, 1959, edition, The Iron Age reported:

> If by any chance some steel companies are struck and others remain open, steel firms have an answer: A mutual assistance proposal. Provision has been made to put into operation something similar to the recent airline plan: Airlines which operated while others were struck coughed up a percentage of their revenue to the lines that were shut down.[19]

At the same time, the New York Times reported:

> . . . Mr. Cooper acknowledged that a team of lawyers representing the steel companies was looking into the applicability of the airline plan to steel. He emphasized that no final decision had been reached on whether it could or should be used.[20]

Consideration of the plan appears to have sprung from a belief by management that the steelworkers might be considering the employment of a "divide and conquer" tactic whereby only one or a few of the steel producers would be struck. In order to prepare for that eventuality, the twelve major firms devised a conceptual mutual aid program. The skeleton description of this tactic was stated in a subsequent issue of The Iron Age as the deadline for a peaceful settlement drew closer--namely:

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[19]"Tough Bargaining Ahead in Steel," The Iron Age, May 7, 1959, p. 57.

[20]A. H. Raskin, "Steel Companies Consider Pooling Profit in a Strike," New York Times (May 7, 1959), p. 27.

> If they [the non-struck firms] decided to remain open, in those cases where the strike call was not made, the mutual assistance plan would probably have to be put into effect. Under this plan, mills not shut down would give financial aid to mills that were shut down.[21]

A somewhat specific statement appeared later in an article by the labor columnist, Victor Riesel, who stated:

> The industry asked its lawyers to work out a simple formula: Put together a plan which would identify who had been which steel company's customers. Take their orders. Calculate the profits. Return them to the struck company if the customers had been doing business with that firm in the past. The steel industry believed that the union could not then hurt one or two companies, force them to settle and then force the settlement on the whole industry.[22]

The apparent purpose of the proposal was to serve as a weapon to be placed in the arsenal of possible strike tactics. On the surface, its implementation depended upon the action taken by the union--yet, in actuality, it appears that the proposal itself was designed to assure that the plan would never be needed. In other words, the prime objective of the assistance pact was to present "a solid front strong enough to dissuade the U. S. W. from attempting to win its substantial wage and fringe demands by

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[21]"The Pressure is on McDonald," The Iron Age (May 28, 1959), p. 71.

[22]Victor Riesel, "Industry Attempts to Establish Insurance Against Strike Losses," Industrial Bulletin (November, 1960), pp. 15-16.

concentrating its strength against a few producers and prevent that strategy from succeeding if tried."[23]

Factually, the traditional tactic used by the union in every strike since 1941 when the basic steel industry became substantially organized has been to strike the entire industry at one time. This has been the pattern in all of the five postwar strikes of 1946, 1949, 1952, 1955, and 1956. Needless to say, it also became the tactic of 1959.

Following the public disclosure of the plan by R. Conrad Cooper, the principal negotiator for the steel industry and executive vice president of U. S. Steel, the Steelworkers--acting through their general counsel, Arthur J. Goldberg--filed a complaint with the Justice Department that the program constituted a violation of the anti-trust laws. Since the proposal was never made operative, the Justice Department dropped the issue.

As a sidelight to this discussion, some firms in the industry argued that such a formal program was not needed. These firms argued that in the event that a "divide and conquer" strategy was employed by the union the not struck firms had the alternative to shut down in sympathy. This contention, however, was rejected by the majority opinion

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[23]"Steel's Mutual Aid Proposal," Business Week (May 16, 1959), p. 26.

which was convinced that the workers who were locked out would--in most states--become eligible for unemployment compensation. In these instances, the effect of such rulings on their respective experience ratings would be to increase their unemployment compensation tax.[24]

Thus, the exact status of the strike assistance program in the steel industry is uncertain. Since the 116 day strike in 1959, satisfactory bargaining agreements were signed in both 1962 and 1963 without a strike deadline date ever being set. While currently there is some question concerning the propects for a peaceful settlement when the current contract expires in May, 1965, there is no indication that the strike pattern of past will be altered if a breakdown occurs. Should the U. S. W., however, decide to use whipsaw bargaining to achieve its demands, it is possible that the industry could re-activate its discussion of mutual strike assistance.

## Management Assistance Plans Rejected

### The Food Chains Business

The National Association of Food Chains in the last few years studied the experiences of the railroad industry and the newspaper publishing business for possible

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[24]"Tough Bargaining. . .," The Iron Age, op. cit., p. 57.

introduction or adaptation to their own business. Recently, however, Mr. Wallace N. Flint stated:

> Out Association did make some inquiry into the experiences of others, notably the Association of American Railroads, in the area of strike insurance but no action was taken at the time and there is no plan for reconsidering this project.[25]

## Comments

From the preceding discussion, it is of interest to note the variety of industries and bargaining situations in which mutual assistance has been investigated. The true significance of this chapter, however, is not to serve as an indication of the conceptual flexibility of employer strike subsidy devices; rather, the real importance stems from the fact that while strike assistance has been studied and discussed by several employer groups, it has not been widely adopted. Only in Hawaiian sugar and California agriculture have similar though smaller scale plans become operative. The main impetus for such a development in these two circumstances stems from the nature of the product produced in these industries rather than the bargaining structure itself. In the former the key factor is the effect that an interruption in production has upon future harvests; in the latter situation, the perishability

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[25]Letter from Mr. Wallace N. Flint, Vice President, National Association of Food Chains, Washington 6, D. C., to this writer, dated October 5, 1963.

of the crop is the motivating factor. Hence, in both of these situation, the establishment of these plans has been in response to the fact that the strike weapon has retained its potency. The reasons why the device has not to date spread in any noteworthy degree to other industries will be explored in the concluding section of this study.

# PART II

## UNION STRIKE SUBSIDIES

# CHAPTER V

# NATIONAL UNION STRIKE BENEFIT PROGRAMS

## Introduction

The oldest of all strike subsidy devices operative in the labor market is the program of national union strike benefit payments. Yet despite its long history, the topic is one that is often misunderstood by the public. The incidence of usage, magnitude of benefits, and the degree of coverage are frequently distorted by both employers and the press.[1] In some instances the benefits paid are substantial--as those provided by A. L. P. A. and I. T. U., which average close to one hundred dollars a week; in other cases they are quite meager--as those paid by the Brewery Workers, which total five dollars a week; while in still other situations no strike benefits are paid--as in the policy of the International Brotherhood of Electrical Workers. Accordingly, the importance of national strike benefits programs varies with the differing policies practiced by each union.

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[1] E.g., see "Unions Build Strike Power," Nation's Business (January, 1960), pp. 62-65.

## The N. I. C. B. Study

The most thorough study available of union strike benefit programs is a survey undertaken by the National Industrial Conference Board (NICB).[2] The survey encompassed the individual policies of 102 national unions that accounted for 13,885,636 trade union members.[3] Many useful findings as to the practices of trade unions--both as individual entities and as a combined movement--on the topic of strike benefit programs came to light as a result of the study. In Table 4, the extent to which major national unions have established such programs is shown. As is immediately apparent, 45 out of 102 of the national unions did not have procedures or funds for strike benefit payments.[4] These 45 unions had a combined

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[2]John J. McKew, "National Union Strike Benefits--1961," Management Record, July-August, 1961. A publication of the National Industrial Conference Board.

[3]Ibid., p. 29. As an indication of the breadth of the study, the "Directory of National and International Labor Unions--1961," Bulletin 1320, p. 45, lists 184 national unions in existence in 1961 with a total membership of 18,117,000 members. Thus, the NICB study covered the practices of unions that account for 76.5% of total union membership.

[4]Several of the Unions included as not paying strike benefits did admit disbursing such funds on "an informal or occasional basis"--such as the United Electrical, Radio, and Machine Workers of America; the American Train Dispatchers Association; and the United Furniture Workers of America. On the other hand, two of the unions, the Association of Fire Fighters and the Special Delivery Messengers Union have a no-strike policy and, consequently no strike benefit programs. Ibid., p. 36.

TABLE 4.--National Unions that Provide Strike Benefits--1961[a]

| Practice | Number of Unions | | Declared Membership |
|---|---|---|---|
| Provide national strike benefits . . . . . | 57 | | 8,816,587 |
| From special strike funds | | 41 | 6,366,083 |
| From general funds. . . | | 13 | 2,046,004 |
| Source of benefits not indicated. . . . . | | 3 | 404,500 |
| Do not provide national strike benefits . . . . . | 45 | | 5,069,049 |
| Total participating unions | 102 | | |

[a]Source: John J. McKew, "National Union Strike Benefits--1961," Management Record, July-August, 1961, p. 29.

membership of 5,069,049 of the membership surveyed--or 36.5% of the total covered by the survey.[5] While many of the unions not paying benefits were "small unions" of fewer than 10,000 members, several stand out as major national unions--namely, the United Steelworkers (1,200,000 members), the International Brotherhood of Electrical Workers (750,000 members), the Hotel and Restaurant Employees and Bartenders International Union (446,000 members), the Building Service Employees' International Union (275,000 members), and the American Federation of State, County, and Municipal Employees (220,000 members).[6]

Concentrating upon the 57 national unions that do provide strike benefits, there is a great variety of methods for funding the plans. The most common procedure employed is that of alloting a specified amount of the regular per capita tax paid to the national union to the strike fund. The actual amount of dues that is apportioned to strike funds in these instances varies substantially. Table 5 presents a comparison of the differing allotment practices of the reporting unions. The median amount of the per capita tax that is set aside for the strike fund in those unions having such programs was $.30 a month.[7] In the case of the

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[5] Ibid., p. 36.

[6] Ibid., p. 36. The membership figures are those for 1961 for each respective union.

[7] Ibid., p. 29.

TABLE 5.--The Amount of Dues per Capita Apportioned for Strike Benefits in Forty-One Unions that Have a Strike Fund[a]

| Amount | Number of Unions | Declared Membership |
|---|---|---|
| Up to 9 cents a month | 1 | 60,000 |
| 10-19 cents a month | 7 | 599,900 |
| 20-29 cents a month | 3 | 283,500 |
| 30-39 cents a month | 8 | 916,000 |
| 40-49 cents a month | 1 | 65,000 |
| 50 cents and over a month | 8 | 2,659,758 |
| Other | 4 | 324,159 |
| Not Specified | 9 | 1,437,766 |
| TOTAL | 41 | 6,366,083 |

[a]Source: John J. McKew, "National Union Strike Benefits--1961," Management Record, July-August, 1961, p. 35.

other unions that provide strike benefits, the usual funding practice entails either a special increase in dues to build up the union treasury or a special assessment to increase the strike fund when either falls below an established minimum figure.

As for the actual amount of financial assistance provided by those unions paying strike benefits, the amounts vary widely. Of the fifty-seven unions involved, the dominant method practiced was payment on a flat-sum basis. The median of the payments provided by this method was $20 a week. The next most popular method was payment on the basis of a sliding scale in which such factors as need, marital status, number of dependent, and length of the strike affect the actual amount of money received by each striker. In several unions, the amount paid in the form of benefits is based upon a percentage of the striker's normal income. In still other isolated cases, benefits were paid only on the basis of need or solely in the form of purchases of groceries or payment of rent, utilities, and other necessary items.[8]

In twenty-two unions out of the fifty-seven, benefits were paid as a matter of right while only nine paid benefits on the basis of need alone.[9] The remaining twenty-six did

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[8]The discussion in this entire paragraph is based upon the findings contained in ibid., pp. 29-35.

[9]Ibid., p. 35.

not report their basis. It was the concludion of the NICB report, however, that the tendency is "increasingly" toward payment as a matter of right.

As for qualifications established by the nationals before benefits can be paid, the most prevalent requirement for eligibility is that the strike be "approved" by the national union. In these cases, the individual union member or the local union would be ineligible to receive funds if a strike occurred without the consent of the national. Another popular qualification imposed by the national unions is that the local union and its members be in "good standing" with respect to their dues obligations. Still another practice, on a more limited scale, is to disqualify a member from receiving funds if he is employed elsewhere during the strike. Conversely, in a few isolated cases, there is a corollary stipulation that a union member will be denied funds if he refuses work while on strike.[10]

A major consideration as to the impact of these benefit payments as a strike subsidy in any particular strike situation is the "waiting period" involved between the beginning of the strike and the beginning of the payments. Of the fifty-seven national unions paying benefits, all but eight had such a waiting period. Table 6 presents a

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[10]The discussion in this entire paragraph is a condensation of the findings in ibid., p. 36.

TABLE 6.--Waiting Periods Before Strike Benefit Payments Begin[a]

| Length of Waiting Period | Number of Unions | Declared Membership |
|---|---|---|
| No waiting period | 8 | 327,297 |
| Begin 2nd week of strike | 16 | 3,582,835 |
| Begin 3rd week of strike | 20 | 3,544,296 |
| Begin 4th week of strike | 2 | 253,000 |
| Other[b] | 7 | 802,159 |
| Unspecified | 4 | 307,000 |
| TOTAL | 57 | 8,816,587 |

[a]Source: John J. McKew, "National Union Strike Benefits--1961," Management Record, July-August, 1961, p. 36.

[b]Includes: three unions that pay benefits when the national officers decide; two unions that pay only when need arises; one wherein benefits are payable the first week provided that the strike lasts a full week; and one in which benefits begin with the second day.

summary of the practices of all of these unions as revealed by the NICB report.

## Strike Benefit Programs as a Form of Strike Subsidization

The strike benefit programs established by various national unions are the most widespread of all the mutual assistance devices studied. They are operative in a great variety of industries.[11] Yet, as is apparent from the N. I. C. B. study, the degree of their involvement in any particular strike varies extensively. In many instances, benefit payments are not present at all; in others, the payments represent quite small sums which are payable only under specified conditions; while, in still other cases, the programs provide an important source of income during a shutdown. Consequently, the significance of these programs to a study of strike subsidization is difficult to assess in precise terms.

With respect to the situations in which strike benefits are paid, the waiting periods and qualification restrictions act as positive forces for minimizing the incidence of spontaneous and unauthorized strikes. In this role, the existence of these programs exerts a stabilizing force which encourages adherence to contract terms and

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[11] McKew, op. cit., pp. 30-4.

bargaining procedures. Moreover, the amount of payments to individual strikers is usually too small to be considered as a serious alternative that would affect a decision whether to strike or not. Even in the exceptional cases in which the payments are relatively high, they still represent a sum that is less than regular earnings.

On the other hand, the payments that are made do provide an income stream which can partially defray some of the costs after a strike has begun. To this extent, these payments are strike subsidies. In most cases, the available funds represent an accumulation of deductions from the wages or dues of the union membership. Should the available funds be exhausted, the national union may still assess members who are working elsewhere. It is rare that all members of a large union are on strike at any one time. In the eventuality that most of the membership of the union is on strike, the national union may seek financial assistance from other national unions to bolster its strike fund or to finance its strike needs.[12]

The fact, however, that all payments by national unions to strikers must be reported in an annual financial report to the Department of Labor serves to assure that

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[12]For a discussion of the formation of the Steelworkers Defense Fund in the 1959 steel strike, see Proceedings of the Third Constitutional Convention of the AFL-CIO, Volume I (Washington: American Federation of Labor, 1959), pp. 118-119, 185, 365, 446, and 688.

the public is informed as to the total magnitude of these payments. Public disclosure, consequently, is not problem. It would be helpful for evaluation purposes, however, if the Bureau of Labor-Management Reports would require a specific breakdown of the aggregate figure to show the amounts involved in specific disputes.

## Three Relevant Cases

Chapters I, II, and III of Part I of this dissertation discussed the Mutual Aid Pact in the airline industry, the Service Interruption Policy in the railroad industry, and the Suspension Insurance Program in the newspaper publishing business. In each of these industries, one of the reasons cited by management spokesmen for the development of their programs was the fact that many of the unions with which they bargain had established strike benefit programs. Tables 9, 10, and 11 show the amount of strike benefits paid out by the major unions in the airline, newspaper, and railroad industries since 1959.[13] The data were obtained from the financial report forms required under the provisions of the Landrum-Griffin Act[14] and on file with the Bureau of Labor-Management Reports of the Department of Labor. The figures themselves are in terms

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[13]Due to their length, the three tables are contained in Appendix B, pp. 253-256.

[14]29 U. S. C. (Supp.) 1959 431(b).

of total dollars. Consequently, there is no indication of the number of length of the strikes in which each union was involved or of the exact number of strikers receiving such benefits. Nevertheless, to the extent that these particular programs have supplied benefits, the figures are indicative of the presence of countervailing funds against the mutual assistance agreements of the respective industries with which they bargain.

It is significant to note that of the 57 unions reported by the N. I. C. B. to provide strike benefits, seventeen of them bargain in these three industries.[15] A plausible explanation for this widespread usage of strike benefits stems from the nature of the service provided by these industries. The services of all three industries are extremely time sensitive. Management cannot build up any substantial inventory prior to a strike or backlog orders during it; therefore, the work force cannot count on overtime before a strike begins or after it ends. Strike benefits, accordingly, have a more meaningful role in these industries than in the typical union in a goods producing industry. A perusal of Appendix B also shows that the unions in these three industries that do not pay strike benefits are virtually all small unions. These

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[15]Appendix B lists twenty unions that have actually paid out strike benefits.

unions undoubtedly lack the membership rolls needed to support and to maintain an effective plan of their own.[16]

Another explanation for the presence of so many strike plans in these three industries is the presence of multiple unionism. The strike exposure inherent ir such a bargaining structure is far greater than in most other bargaining situations.

## A Related Consideration

As the title of this chapter indicates, consideration has been limited to the strike benefit policies of national unions. In numerous instances, of course, local unions either provide their own program or supplement the strike program of the national. Because of the thousands of locals that exist, no study has been made of the practices of the locals. In the process of compiling the information contained in Appendix B, a brief random sampling of files of several of the major locals in some of the large national unions in the three industries studied was made. The findings were inconsequential in that there was no pattern that could be ascertained from the sample. Some locals paid small benefits when the national did not have a program, many did not; some locals had no program when the

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[16]As will be discussed in Chapter VII, in the railroad industry these small unions can rely upon unemployment compensation as a means of support during a strike period. The consequence of the absence of such programs to the small unions is mitigated and the lower benefit payments paid by

national did, some did; and a few of the locals paid rather large sums in absolute terms when the national did not have a program. All in all, it would appear that the policies of the locals are more oriented toward individual "hardship cases" rather than any type of blanket coverage program.

## Comments

A discussion of national union strike benefits programs is a necessary part of a study of strike subsidies. These programs are too varied to permit many generalizations. The role played by these programs in specific labor disputes ranges from none at all to one of noteworthy proportion. In each strike, the importance of strike payments must be assessed individually.

In the three industries in which management has in recent years established formal strike subsidy devices, union strike benefit programs are both widespread in coverage and substantial in relative size of payments. The time sensitivity of the service provided by these industries, which restricts the ability of strikers to increase their income prior to a strike or to regain lost wages after a strike is settled, combined with the extensive strike exposure created by multiple unionism, which greatly increase

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the railroad unions than by the airline and newspaper unions is explained by the availability of these additional funds.

the likelihood of employment interruption, have made such programs common practice. This supposition, of course does not explain the use of strike funds by unions in good producing industries or which are single bargaining agents in an industry. On the other hand, it is one explanation for the absence of strike benefit programs in many of these industries. In these other industries, the presence of strike benefit programs is most likely affected by the influence of the bargaining practices of the unions. The United Automobile Workers never stike the whole industry at once and do have such programs; on the other hand, the United Steelworkers Workers always strike the whole (basic) industry and do not have benefits. Moreover, the availability of overtime employment before or following a strike together with a comparative assurance of uninterrupted employment during the life of a contract has minimized the necessity of such programs to those unions.

For the most part, the national unions that do have strike funds make the ultimate decision as to whether or not such benefits will be paid in a particular dispute. Such a development has meant an increasing involvement by the national union in the bargaining issues of the member locals. The possibility that the views of the national and those of the local may clash over the importance of certain features of a contract is always present. The fact that the national has the power to threaten a denial of

strike funds should the local disagree with the national does raise the same question posed in the discussion of the railroad plan: namely, in these situations in which the strike subsidy payments are contingent upon approval by a third party, the possibility of an arbitrary use of this power is created. In the railroad discussion, I recommended that a Board of Review be established to safeguard the participants from the possibility of arbitrary decisions by the Advisory Board. At first glance, it would seem that consistency would require a parallel recommendation with respect to the administration of the strike benefit programs by the national unions that have such plans. Such is not the case. The impetus for the recommendation concerning the railroad plan was that the public interest in a free collective bargaining system requires that anytime a certain railroad wished to settle a specific dispute, it could do so without fear of present or future reprisal from any third party. The recommendation was <u>not</u> premised upon any belief as to what is in the best interest for the maintenance of harmonious relationships between the participants in the agreement. Such a consideration is the sole concern of the members themselves. With respect to the power of control that national unions now possess over the dispensing of strike benefit funds, it is difficult to conceive of a situation in which the refusal of a national to approve benefit payments to a striking local

would be harmful to the public interest. In fact, the veto power of the national union over the usage of such funds could actually prevent an unauthorized or unwarranted strike from taking place. Since there is no threat to the public interest inherent in the power of the national unions to approve or disapprove strike benefits in a labor dispute, there is no need for public policy to require any type of review authority.

# CHAPTER VI

# STRIKE INSURANCE FOR UNIONS

## Introduction

Early in 1956, a local group in Portland, Oregon who described themselves as being composed mostly of "independent, small business men and women" began the involved organizational procedures associated with the establishment of a unique insurance company. The firm--known as the United Employees Insurance Company and incorporated February 25, 1957, in Delaware--was organized "for the purpose of issuing insurance policies on the group plan insuring individuals, members of organized labor unions, against loss of wages during periods of work stoppage under circumstances where such insured persons could not obtain unemployment compensation from their respective State Unemployment Compensation Commissions."[1] The firm advertised that it would "maintain a labor-oriented organization and (would) engage in no general insurance business since its primary purpose is to provide a service to organized labor."[2]

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[1] "Prospectus of the United Employees Insurance Company," dated March 2, 1959, p. 6.

[2] Ibid., p. 8.

The promoters reported that they had unofficially discussed the concept with numerous individual employees and local union officers. Further, they claimed to have "received unanimously favorable comment"[3] in these discussions. The promoters, however, emphatically stated that no organized union had been to date (i.e., prior to March 2, 1959) requested to endorse or approve the plan and that the company itself was in no way connected with or sanctioned by any formal union organization.[4]

It is interesting to note some of the justifications cited for the development of union strike insurance. In a form letter sent to all international labor organizations, the promotional letter--after citing the programs in operation in the airline, railroad, and newspaper industries--stated:

> Management has made substantial strides in self-insurance against work stoppage losses . . . .
>
> This trend of collective protection is growing. Eventually, it could weaken the bargaining power of every union in the country.
>
> . . . We feel that the success of this Company will have an immense impact upon the bargaining structure between labor and management. No longer will there be the danger of an overwhelming imbalance.[5]

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[3]Ibid., p. 8.

[4]Ibid.

[5]Form letter from Mr. Anthony Freitas, Secretary-Treasurer of United Employees Insurance Company, to "All international labor organizations," Wilmington, Delaware

Similarly, Mr. Anthony Freitas, Secretary-Treasurer of the firm, was later quoted in a union publication as saying:

> Recent moves by big business indicate thinking along insurance lines to protect their interests during work stoppages. If organized labor is to maintain its present collective bargaining position, the need for prompt action along wage insurance lines is self-evident.[6]

## The Actuarial Examination

Before actually embarking upon such an orginal endeavor as this one, the promoters sought an actuarial examination of the feasibility of the concept. The E. P. Higgins and Company of Philadelphia, Pennsylvania, was engaged to make such a study. Its report concluded:

> In our opinion, based upon our determinations and with proper underwriting, i.e. selection of average and diversified risks, the business you propose to enter is feasible and may be conducted with gain to both insurer and insured.[7]

The actuarial study was based upon a close examination of work stoppage statistics published by the Bureau of Labor Statistics for unions affiliated with the AFL-CIO for the five-year period from 1952 through 1956. At the request of

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(n.d), p. 1. (Copy on file with the American Newspaper Guild, Washington, D. C.)

[6]Leonard M. Sagot, "Insurance Company to Sell Strike Insurance to Union Members," The International Mailer, August, 1959, p. 4.

[7]E. P. Higgins and Company, "Actuarial Examination of Feasibility of Work Stoppage Insurance for United Employees Insurance Company, Wilmington Delaware," Philadelphia, Pa., March 13, 1958, p. 4. (A copy of the report was received on loan from the law firm of Kilboran & Van Brunt, Wilmington, Delaware.)

the promoters, the statistical data involving work stoppages of unions not affiliated with the AFL-CIO were eliminated from the actuarial calculations after it was ascertained "that the man days lost per employed worker who was a member of a non-affiliated union was nearly twice that of the time lost by a worker who was a member of a union affiliated with the AFL-CIO."[8] After excluding non-affiliated unions from the data, "the remaining statistical data for examination covered approximately eight-two per cent of all workers involved in work stoppages, comprising eight-one per cent of the total time lost,"[9] for the five year period. After completing a lenghty statistical calculation process, a final basis of rates and benefits was determined under the stipulation that the benefit period be limited to a maximum of twelve (12) weeks. The suggested schedule which was later accepted in total by the firm is presented in Table 7.

## Participation in the Program

The intention of the Company, as stated earlier, was to confine its participants to affiliated local and international unions; but an independent or unaffiliated union could be covered if after investigation it was determined

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[8] Ibid., p. 1.

[9] Ibid.

TABLE 7.--Schedule of Rates and Benefits of the United Employees Insurance Company.[a]

| Plan | Weekly Benefit | Monthly Premium No Waiting Period | Monthly Premium One Week Waiting Period | Monthly Premium Two Week Waiting Period |
|---|---|---|---|---|
| A | $62.50 | $ 2.50 | $ 1.70 | $ 1.35 |
| B | 50.00 | 2.00 | 1.40 | 1.10 |
| C | 43.75 | 1.75 | 1.20 | .95 |
| D | 37.50 | 1.50 | 1.00 | .80 |
| E | 31.25 | 1.25 | .85 | .65 |

[a]Source: E. P. Higgins & Company, "Actuarial Examination of Feasibility of Work Stoppage Insurance for United Employees Insurance Company Wilmington, Delaware," Philadelphia, Pennsylvania, p. [illegible] (unpublished material).

that the independent's risk of loss was comparable to that of affiliated unions.[10] In order for an international or a national union to qualify for coverage, eighty per cent of its locals must have approved the plan. The decision, however, as to whether an individual local union member would participate or not was left up to each member to decide for himself. But should the total number of insured local union members drop to less than fifty per cent of the members of the local, the policy would become null and void for that local.[11]

Once accepted for coverage, there were several conditions that affected the payment of benefits to a claimant. Insurance benefits would not cover work stoppages under the following circumstances.[12]

1. In the event that a work stoppage was not authorized by the local union, governing body, or its affiliated international organization.

2. If the work stoppage was a union violation of any collective bargaining agreement which is in force at that time. (Stoppages resulting from employer violation of collective bargaining agreements were covered).

3. If the work stoppage is unlawful under any applicable federal, state, or local law.

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[10]"Prospectus . . .," op. cit., p. 6.

[11]United Employees Insurance Company, "Insurance Policy," Specimen copy (n.d.), pp. 1-2. (A copy of the policy was received on loan from the law firm of Kilboran & Van Brunt, Wilmington, Delaware.)

[12]Ibid., p. 2.

4. In the event that the individuals involved in a work stoppage are eligible under applicable state law to receive unemployment compensation payments from the state government.

While there was no provision for additional assessment during the twelve week benefit period, the policy did contain an escape clause which was designed to cover the possibility that in any single year there might be unusual or widespread "labor unrest." Accordingly, if the surplus account of the Company should be depleted to fifty per cent or less of the Company's capital account, the benefit schedule would be suspended and the future payments would be made only on a pro rata basis relative to future premium income.[13]

In the event that the local and/or international union had a strike fund--which the firm recognized as constituting "a competitive activity"--the union members would still be eligible for complete insurance coverage and the proposed insurance would be considered as a "supplemental source of income during the work stoppage."[14] Consequently, in these situations the insurance program would have served to provide a second layer of economic insulation to a striking union member.

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[13] Ibid., p.4.

[14] "Prospectus . . .," op. cit., p. 5.

## The Reaction of Organized Labor to the Proposal

Despite the alleged favorable reaction to the initial proposal, the program did not win the endorsement of organized labor in general. Insofar as the AFL-CIO was concerned, the proposal was "turned down flatly." Mr. Nelson Cruikshank, director of the AFL-CIO Department of Social Insurance at that time, claimed that the concept violated the principles of both unionism and of insurance. In this regard, he stated:

> You don't insure when the risk is increased by the insurance. A group of workers might have a grievance and the insurance would encourage them to call for a walkout when the problem could be settled peacefully. These forms of insurance actually provoke strikes.[15]

## The Collapse of the Program

The Company itself never became operational. Before it could actually engage in business, it was necessary to secure a Certificate of Authority from the Insurance Commissioner of the State of Delaware. As a requisite placed upon the firm to receive such a Certificate, the Company was required to have $250,000 in its capital account and $125,000 in its surplus account.[16] The promoters also

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[15]"Strike Insurance: $1 Million Ace-in-Hole," Oregon Labor Press, December 25, 1959, p. 6.

[16]"Prospectus . . .," op. cit., p. 8.

determined that $125,000 more would be needed before it could begin business. After the veto by the AFL-CIO, attainment of this amount was an impossible task. Mr. John Van Brunt, Jr., attorney for the firm, described the futile attempt and the final result as follows:

> After the Prospectus became effective (March 2, 1959) he (Mr. Anthony Freitas) made efforts to sell stock in the company to union organizations and groups. I recall that he solicited by direct mail substantially all of the international union headquarters in Washington and a large number of major locals throughout the country. He tried to interview all those who replied in person. The ultimate result was that he was unable to market any substantial amounts of securities and the entire matter died for lack of interest.[17]

While the United Employees Insurance Company itself has passed out of existence, its failure is really inconsequential. The important consideration is the concept itself. Relatedly, Mr. Brunt adds:

> The whole thought was most attractive to us and the promoter's idea seemed to be one which was feasible such to experiment their proof over a period of time after the risk was accepted. A basic problem exists in that the insurance business proposed could not be commenced with a limited number of policies. It had to start with a large number of insured local unions dispersed geographically and by trade in order to obtain the advantage of averaging all risks. Again this would require a very large initial capitalization to warrant commencement of business.[18]

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[17] Letter from Mr. John Van Brunt, Jr., Attorney for the United Employees Insurance Company, Wilmington, Delaware, to this writer, dated December 13, 1963.

[18] Ibid.

## Comments

In the future, it is conceivable that employee strike insurance may be revived for organized labor. The initial interest of some union officials was quashed by the failure of the plan to receive the endorsement of the AFL-CIO. Because the plan was designed specifically for affiliated unions, the opposition was fatal. Actually, the objection raised by Mr. Cruikshank--that the presence of such devices encourages strikes--is a debatable position. The availability of national union strike benefits differs in no meaningful way from the program discussed in this chapter. The eligibility requirements and funding procedures are virtually the same. The AFL-CIO leadership has not expressed any similar disinclination toward the establishment of such strike programs by its member unions. On the contrary, it has often encouraged such actions.[19] Thus, to contend that an employee strike insurance program would foster strikes that would otherwise be avoided is tantamount to making the same accusation against the present union strike funds. In both cases, it is doubtful

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[18] Ibid.

[19] E.g., see Proceedings of the Third Constitutional Convention of the AFL-CIO, Volume I (Washington: American Federation of Labor, 1959), pp. 118-9.

that either device contributes to such a tendency. Their sole function is to provide minimum income protection after a strike has begun and not to serve as an offensive instrument of provocation.

Consequently, the principle of employee strike insurance may merely be temporarily dormant. Its earlier demise may well be due to the fact that it was introduced too early to be fully appreciated.

# CHAPTER VII

# RELATED DEVELOPMENTS CONCERNING OTHER FORMS OF EMPLOYEE STRIKE ASSISTANCE

## Unemployment Compensation

### In General

In the United States, eligibility for unemployment compensation is basically determined by the states.[1] In all but two, employees who are directly involved in a labor dispute--primary strikers--are denied eligibility for such benefits for the duration of the strike period. In New York and Rhode Island, primary strikers are eligible to receive full benefits only if the strike lasts beyond a specified length of time. In Rhode Island, benefits begin after six weeks; in New York, after seven.

Hence, it is only in these two states that unemployment compensation acts as a type of strike subsidy as defined in this study.

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[1]See, Willard A. Lewis, "Unemployment Compensation in Labor Disputes," Management Record (January, 1961), pp. 2-6, and 23-34. The article was published by the National Industrial Conference Board and was based upon earlier findings by the author in his doctoral dissertation.

In the Railroad Industry

There is one major exception to the basic pattern of state control over unemployment compensation elibibility. In 1938 the Railroad Unemployment Insurance Act was passed which created a federally administered system for the railroad industry. For the purposes of the present study, it is significant to note that under this system a striking employee--under certain circumstances--was made eligible to receive unemployment benefits of between $4.50 and $10.20 per day for a maximum of 130 days in a benefit year. The benefits begin immediately with the first day of unemployment.

Under the terms of the Act of 1938, striking employees are disqualified from receiving unemployment benefits only if the strike is commenced in violation of the Railway Labor Act of the terms of the constitutions and/or bylaws of the labor organization to which they belong.[2] Thus, in all "legal" strikes, unemployment benefits are payable to striking employees. Authority is vested in the Railroad Retirement Board to certify the applicability of the statute to particular disputes.

The debate over the unique status accorded strikers in the railroad industry came into full public discussion

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[2]45 U. S. C. 354 (A-2) (iii).

in Congressional Hearings in 1957 and 1959.[3] The justifications for the practice were given by Mr. Lester P. Schoene, an attorney for the Railway Labor Executives' Association, who testified:

> . . . This difference [i.e., between state unemployment compensation laws and the Railroad Unemployment Insurance Act] has existed since 1938. It was consciously adopted in recognition of the fact that the procedures of the Railway Labor Act themselves subject railroad employees to much greater restrictions than are applicable to other industrial employees. It was believed that the procedures of the Railway Labor Act were such as to assure that every means of amicable adjustment of disputes would have been exhausted before a strike would occur; consequently, there was no justification for denying benefits for unemployment occurring during a strike that was not in violation of the Railway Labor Act or of the laws of the organization . . .[4]

> . . . There was this further philosophy underlying the provision, that by drawing a distinction between a strike occurring after full compliance with the Railway Labor Act and a strike that occurred either in violation of the act or in violation of the constitution and bylaws of the organization, an incentive was put upon observing both the restrictions of the union constitution and of the statute.[5]

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[3]U. S. Congress, House, Committee on Interstate and Foreign Commerce, Hearings, Railroad Retirement and Railroad Unemployment Insurance Legislation, 85th Cong., 1st Sess., 1957, pp. 434, 463-465, and 482-487; and U. S. Congress, House, Committee on Interstate and Foreign Commerce, Hearings, Railroad Retirement and Railroad Unemployment Insurance Legislation, 86th Cong., 1st. Sess., 1959, pp. 127, 130-131, and 172-177.

[4]Ibid., Hearings (1957), p. 464.

[5]Hearings (1959), op. cit., p. 174. In the controlling court case on this point [Brotherhood of Ry. and S. Clerks v. Railroad Retirement Bd. 239 F.2d 43-4 (1956)] it was ruled that: "It seems clear that the Railway Labor Act was intended to encourage negotiation and conciliation and that the special dispensation in the Railway Labor Act as to

The railroad industry, as would be expected, has long sought to have the Act of 1938 amended to delete the provisions allowing benefits to be paid to primary strikers. In the Congressional hearings on the subject, the logic of the industry's position was summarized by Mr. Leonard J. Calhoun on behalf of the Association of American Railroads as follows:

> The person on strike is not unemployed due to lack of work. His wage loss is due to his voluntary action. The disqualification is of course not a penalty. Unemployment insurance is not intended to be a device for paying strikers company-financed strike benefits, whether the strike is regularly or irregularly called.[6]

Similarly, Mr. Thomas M. Healy, the industry member of the Railroad Retirement Board, stated:

> If a man wants to strike, let him strike, but I don't think he has a right to collect unemployment benefits from the people he is striking against.[7]

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unemployment benefits was designed to encourage compliance with the 'cooling off' procedures of the Railway Labor Act. Even though the Railway Labor Act does not specifically state that it is illegal to strike before exhausting all attempts at negotiation, we cannot say the Board could not reasonably conclude that, for the purposes of the Railroad Unemployment Insurance Act, a strike violates the Railway Labor Act when it is commenced in disregard of the duties that act lays upon both the railroads and the employees."

[6]Hearings (1957), op. cit., p. 434; for an extremely caustic comment on this topic, see "Is 'bargaining' so Sacred?" Railway Age, Vol. 155, No. 6 (August 5, 1963), p. 42.

[7]Hearings (1959), op. cit., p. 130.

From 1938 to 1957, $15.6 million was paid out to employees either participating in strikes or affected by related work stoppages.[8] This total, however, presents a somewhat distorted impression of the issue. Of the total amount, over $6 million was involved in one strike against the Louisville and Nashville Railroad in 1955.[9] This is the only significant instance prior to 1957 in which unemployment benefits achieved a noteworthy magnitude in any single strike. Since 1957, however, the pattern of usage as a strike subsidy has become more pronounced. Over the five year period from 1958 through 1962, approximately $7 million of unemployment benefits were paid out during strike periods.[10] Typically, the amount involved in any one strike was small yet, in at least one instance the absolute figure was substantial--namely, the $943,014.53 paid out during the 1960 strike against the Long Island Rail Road.[11]

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[8] Ibid., p. 127.

[9] Ibid., p. 174; see also Hearings (1957), op. cit., pp. 464-465.

[10] The $7 million figure is based upon this writer's own calculations from general data contained in the Annual Report of the Railroad Retirement Board for each of the five years. Unfortunately, the reports of the Board do not distinguish between benefits paid to direct participants and those paid to persons "affected" by a work stoppage.

[11] Supra, Chapter II, p. 110.

In his statement concerning the period through 1958, Mr. Schoene testified:

> We have had 20 years of experience in the operation of this law and there has been relatively little occasion to pay unemployment compensation to people unemployed on account of strikes. The railroad industry has not suffered from strikes. This provision in the law has not encouraged strikes.[12]

The trend since 1957, while admittedly erratic, seems to challenge the complacent attitude or Mr. Schoene and dictates that more concern be given to the topic.

## Strike Assistance Provided by Public and Private Agencies

During the conduct of a modern day strike, the hardship caused by a loss of income during the strike period varies widely from locality to locality and family to family. Consequently, if the union is to maintain a maximum of internal membership support, it must be cognizant of these variations in basic human needs. One method of assuring the availability of minimum food, clothing, and shelter is for the union to become aware and then inform its members of the services available from both public and private agencies in the community to those who lack sufficient personal savings; or who have large families; or who might have heavy financial obligations

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[12] Hearings (1959), pp. 173-174.

pending during the strike period. Obviously, the length of the strike would be a major consideration in determining the extent to which the membership might avail themselves of such opportunities.

The long steel strike in 1959 provides an excellent example of the process whereby a union--through careful advance planning--was able to avail itself of a maximum of public and private benefit programs. During the 116-day strike period, the United Steelworkers of America secured a sum that exceeded $22 million from such sources. Table 8 presents a detailed breakdown of this amount. While little documented evidence is available concerning the degree to which other unions rely upon such sources for assistance, there is no reason to believe that the Steelworkers represent an atypical case. The AFL-CIO, for example, has published the following statement to its members:

> A variety of resources is often available to help individual strikers and their families suffering service hardship during a strike. The various social agencies, for example, stand ready to lend their assistance. The AFL-CIO Community Service Committee and its local representatives are available to help work out arrangements for such assistance.
>
> Many unions have found it possible to make special arrangements with local merchants, banks, insurance companies, and credit agencies, under which striking union members would be given consideration in meeting financial obligations. . . Local merchants will often be glad to extend credit for the duration of the strike.[13]

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[13]"Union Problems in Conducting Strikes," AFL-CIO Collective Bargaining Report, Vol.3., No. 11 (November, 1958). p. 71.

TABLE 8.--Assistance Provided by Public and Private Agencies During the Steel Strike of 1959[a]

| | | | |
|---|---|---|---|
| Public Assistance | | | |
| | Total Number of Steelworkers Applying | 54,143 | |
| | Total Number of Applicants Rejected | 16,298 | |
| | Total Number of Families Accepted | 49,333 | |
| | Total Value of Assistance | | $12,324,715.00 |
| Unemployment Compensation in New York) | | | 9,000,000.00 |
| Surplus Foods | | | |
| | Largest Number of Families Receiving Food in One Month | 105,114 | |
| | Total Pounds of Food Received | 7,133,210 | |
| | Total Value of Food | | 1,426,642.00 |
| Voluntary Agencies | Number of Cases | 8,517 | |
| | Total Value of Assistance | | 118,712.00 |
| TOTAL VALUE OF PUBLIC AND PRIVATE ASSISTANCE | | | $22,870,059.00 |

[a]United Steelworkers, Assistance Provided by Public and Private Agencies During the Steel Strike of 1959 Pittsburgh: United Steelworkers of America, 1960), p. 41.

Comments

The use of unemployment benefits as a strike subsidy introduces a new element into the study. All of the formal devices discussed up until this point have been developed and administered by the parties themselves. Unemployment compensation in strikes injects state government or, in the case of the railroad industry, the federal government into the collective bargaining arena.

In both New York and Rhode Island, the funds become available only after a long waiting period. Hence, the role of unemployment compensation as a form of strike subsidization in these states is restricted to work stoppages of a relatively lengthy duration. In the railroad industry, however, there is no waiting period. When a strike occurs in the industry and the terms of the Railway Labor Act and the relevant union constitutional provisions have been adhered to, unemployment benefits are involved. Yet, despite the current limited applicability, the issue as to the desirability of this development combined with the possibility that these current programs could provide precedent for similar action elsewhere dictate that attention be focused upon these specific situations.

In a broad discussion of labor policy in the United States, the Labor Study Group[14] of the Committee for

[14]The membership of the group consisted of: Clark Kerr (chairman, Douglass V. Brown, David L. Cole, John T. Dunlop,

Economic Development stated:

> But our endorsement of methods used by employers and unions to ease the financial burdens of labor disputes holds only when those methods are private. We oppose the payment of unemployment compensation to workers involved in a labor dispute, whether that dispute takes the form of a strike or lock out. State laws vary on this point, though most conform to our recommendation. Unemployment compensation is now available to striking railroad workers.[15]

To this writer, it is also difficult to reconcile the payment of unemployment compensation to primary strikers with a belief in a free collective bargaining system. Two fundamental objections to such a practice stand out. First, the part that the government should assume in the settlement process of private labor disputes should be restricted whenever possible to that of an impartial third party. The involvement of governmental statutes and facilities to provide funds to primary strikers taints this role of neutrality with a distinct mark of partiality. Secondly, the fact that the funds used to pay these benefits are obtained solely from a tax upon employers sesms by definition, to exclude these payments from even being considered as a source of income to primary strikers. Moreover, in the case of the railroad industry, the grounds presented in defense of the practice by the railroad unions are not

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William Y. Elliott, Albert Rees, Robert M. Solow, Philip Taft, and George W. Taylor.

[15]Committee for Economic Development, The Public Interest in National Labor Policy, A Report Prepared by the Labor Study Group (New York: Committee for Economic Development, 1961), p. 136.

convincing. The unions in the airline industry are similarly subjected to the same lengthy proceedings and exhausting provisions of the Railway Labor Act; but since employees on the airline industry are not covered by the Railroad Unemployment Insurance Act, they are not eligible for unemployment benefits in the event of an actual strike. Also the contention made by Mr. Schoene that these benefits serve as a device by which the union leadership can encourage compliance by the membership with established procedures is more of a rationalization for the existence of the practice than a justification for its continuance. Certainly the officials of every union in the country would welcome the presence of such a strike subsidy as a method of maintaining control over their own rank-and file who are sometimes restless during the negotiation period. There is no substantive reason why the railroad unions should enjoy such a singular privilege. With respect to the eligibility of primary strikers for unemployment benefits in the two states, the precise reasons for this practice are not available. Effective lobbying, however, would seem to be the most logical explanation.

With respect to the assistance provided by public and private agencies (excluding unemployment compensation payments) the benefits--often in kind rather than monetary income--are usually restricted in coverage, severely limited

in amount, and paid more often on the basis of need than of right. As a result, they do not, at present, represent a strike subsidy that is of any consequence in either magnitude or principle.

# PART III

# CONCLUSIONS AND RECOMMENDATIONS

# Chapter VIII

# CONCLUSIONS AND RECOMMENDATIONS

## Conclusions

### Bargaining Structure and Environment

Most of the strike subsidy devices discussed in this study have involved only three industries: the airline, newspaper, and railroad industries. Employers have recently devised and made operative the Mutual Aid Pact for the airlines, suspension insurance for the newspapers, and the Service Interruption Policy for the railroads. Unions in these indsutries have traditionally relied upon strike benefit programs which are both widespread in usage and substantial in benefit levels. In addition, the members of the railroad unions have been made eligible for unemployment compensation coverage in most strikes. Initially, it would appear that the evolution of the employer plans could easily be explained in terms of strike power on the union side of the bargaining tables encouraging a reciprocal response from the opposite side. Countervailing power, however, is only a partial explanation for the formal establishment of these employer plans. Had countervailing

power been a dominating consideration in their evolution, many more such devices would presumably have sprung up in numerous other bargaining situations. The fact that employer programs have not been formed elsewhere to any major degree casts strong doubt upon such a monistic explanation of their development. Actually, it appears that these devices became realities as a result of the interaction of several unique considerations. An examination of the bargaining structure and environment of these industries reveals the prominent casual factors.

The most outstanding characteristic of the bargaining structure in these industries is the presence of multiple unionism, although, as we have seen, this has not always been sufficient to induce employers to develop strike insurance plans. Each employer must bargain with a host of separate unions--anyone of which can shut down the entire operation of the firm. The presence of multiple unionism significantly increases the strike exposure of a firm and industry. The numerous contracts, negotiation sessions, strike threats, whip sawing, and tendencies toward jurisdictional controversies--to mention a few--supply bontiful opportunities for work stoppages to occur. Under the shadow of multiple unionism, the flowering of stable industrial relations

a direct function of time--both with respect to news coverage and advertising. Consequently, the opportunities for employers in these industries to stockpile an inventory prior to a strike or to recoup losses after a settlement is achieved are severely limited. Employees in these industries are, correspondingly, affected adversely by work stoppages. Opportunities for overtime employment before or after a strike period are often unavailable. Hence, both parties have ample reason to search for ways to protect themselves from strike losses.

A derivative consideration from the issue of time sensitivity is the fact that the strike weapon has retained its full measure of economic potency. In some industries--like utilities, petroleum, and chemicals--the introduction of highly automated equipment has meant that the human contribution and importance to the production process has been greatly diminished. As a result, when a strike occurs, operations of these industries have often continued unimpaired with respect both to revenue flows and consumer allegiances. Strike effectiveness, accordingly, has been markedly reduced in significance in these industries. In the airline, newspaper, and railroad industries, technological changes have also been numerous and far-reaching but they have not--to date--been extensive enough to permit operations to continue in the face of a strike by one union, especially when supported by other

unions which refuse to cross a picket line. Thus, when shutdowns take place, revenue ceases and consumer loyalties often dissipate. As the length of a strike increases, these problems become more acute.

In the postwar years, these three industries--like many others--have experienced extensive changes in technology. Fixed costs along with other quasi-fixed costs have risen noticeably in recent years.[2] As a result, the costliness of a strike to a firm has been amplified with the passing of each year. A parallel can likewise be drawn to the plight of the worker during this same period. Since the end of war, the prosperity years have witnessed a rising standard of living for most groups in our society. Many union members now have home mortgages, installment purchases, children in college, insurance premiums, and other similar financial commitments that must be met regularly. To many employees in other industries, pre-strike or post-strike overtime employment affords an

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[2]With respect to the movement of fixed costs in general, Charles . Schultze, in his Recent Inflation in the United States, Study Paper No. 1 for the Joint Economic Committee of the U.S. Congress (Washington: Government Printing Office, 1959) , has written: "One of the major, though little noticed, features of the postwar period has been the rapid change in the cost structure of the American economy. The proportion of total costs accounted for by relatively fixed items of expense has risen sharply." (p. 79).

opportunity to mitigate at least a portion of these expenses. Such is generally not the case in the airline, newspaper, and railroad industires. Therefore, the unions in these industries have been prompted to develop strike benefit plans that have comparatively high benefit levels and, in the railroad case, to have unemployment compensation benefits available in most strikes as a supplement to their strike programs.

As for the product market of these three industries, imperfect competition is the rule. The firms that compose these industries are typically oligopolistic in their regional or franchised markets. When more than one firm is present in a specific market, the basically homogeneous nature of the service provided and the lack of noticeable price differentials between firms means that customers can with little hesitation, switch their purchases to a nonstruck competitor. Hence, to be truly effective, the employer plans require widespread participation within the industry, especially of the larger firms. If the plans lacked substantial membership, the few subscribers would be vulnerable to a simultaneous strike which would mean that the non-participants could attract the customers of the shutdown firms and the objectives of the plan would be nullified. The more imperfect the market structure, the fewer the firms, the greater is the relative ease of obtaining maximum participation. In the airline and railroad

industries, however, extensive membership is a necessary condition for the effective operation of their programs but it is not sufficient alone. Competition from alternative forms of transportation currently represents the Achilles heel of these plans. In the future, it is possible that inter-industry assistance agreements could be devised but, at the present time, there is no indication that such arrangements have been contemplated. In newspaper publishing, the question of substitutes in not a paramount issue. Most cities and regional areas negotiate on an association basis. Frequently if one firm is struck, the others in the bargaining group shut down in sympathy. Hence, alternative choices to the reader and advertiser in local areas are often not available. While out-of-town newspapers can be shipped into a struck market area, these "imported" dailies may provide news coverage but they offer little, if any, lasting competition for the main source of income to the struck papers--namely, local and classified advertising. Moreover, once a strike is ended, most subscribers and advertisers return to their local paper. Consumer loyalties are more quickly renewed in the newspaper field than in the airline and railroad industries.

The types of bargaining negotiations conducted between the parties does not seem to be a factor contributing to the furtherance or hindrance of these devices.

The airline industry bargains on an individual firm basis; the newspapers typcially on a city-wide or regional basis; and the railroads usually on an industry-wide basis although the strike pattern of the past few years has been one of strikes against single carriers. Similarly, examples of unions in other industries which bargain on the firm, region, or industry level and which provide strike benefit programs can be cited; conversely, examples of unions that bargain at each of these levels and which do not have such programs could also be cited. Typically, however, bargaining relationships which actually result in industry-wide strikes should negotiations be stalemated are illsuited for the operation of strike subsidy programs.[3] Both the Mutual Aid Pact and the Service Interruption Policy are inoperative in the event of an industry-wide strike; the newspaper plan, however, could still theoretically function since the benefits are paid by an independent insurer rather than by other firms in the industry. But since most private insurance programs are funded upon the assumption that the insured risk will not simultaneously occur to all of the insurees, it is doubtful that the independent insurer could continue

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[3]The minor strike plans operative in California agriculture and Hawaiian sugar (supra, Chapter IV) were specifically designed for industry-wide strikes and therefore, represent exceptions to this conclusion. These two plans have been neglected in the discussion in this chapter because they are small in operation and because their establishment was in response to a singular strike problem: perishability of present crops in the former and damage to future crops in the latter.

for any prolonged period to pay adequate benefits to the entire industry (or any major portion therof). By the same token, it is extremely difficult for a union to provide an adequate strike benefit program if most of its members are on strike. Thus, few unions that both bargain and strike on an industry-wide basis have formal strike benefit programs. The economics of funding and administering such a program are virutally insurmountable. Interunion financial assistance programs, however, have at various times been established to aid unions in just such a predicament.[4] The Steelworkers Defense Fund is but one example of how unions which have members who are employed are able to muster funds to assist another national union whose majority of membership is on strike. These interunion programs have usually been on an ad hoc basis and, as such, have been excluded from detailed discussion in this study.

Thus, to recapitulte briefly, the preceding discussion disclosed a pattern of stimulants to the development of strike subsidy devices. With respect to the employer plans, the three industries with the most advanced plans have several common characteristics that encourage the establishment of such programs. While other industries may have one or several of these traits, it is the combined presence of all of them which makes these plans both desireable and feasible. These factors are:

1. multiple unionism
2. retained potency of the strike weapon
3. rising fixed costs during the postwar years
4. extremely time sensitive services or products
5. the use of whipsaw strikes by unions in the industry
6. imperfect product markets
7. a relatively homogeneous service or product
8. the availability of substitute services or products

As for the union devices, it is logical to expect that several of the causes of industrial instability which have attracted management attention to strike subsidies would also contribute to union interest. While certainly not limited to the airline, newspaper, and railroad industries, the unions in these industries have an especially strong and widespread reliance upon strike subsidies. Motivation for the extensive usage of these devices is also found in the bargaining environment of these industries. The following factors have been important interest stimulators:

1. multiple unionism
2. rival unionism

3. the derivative effect of the time sensitivity for the products and services of the firms upon the demand for labor
4. the practice of striking individual firms rather than entire industries

While it is difficult to explain the presence of strike benefit programs elsewhere in terms of the above brief list, these considerations do materially aid in understanding the major role assumed by these funds in these three industries. In no other bargaining situation are strike subsidies more important--with respect to magnitude and prevalence--than they are to the unions in these industries.

Having outlined the major factors that have promoted strike subsidies, it is immediately apparent that these characteristics are not universally found in other bargaining structures and environments. In many labor-management relationships, strike subsidy programs would be inappropriate or infeasible. For employers, the following factors would tend to forestall the adoption of such plans:

1. Bargaining situations that are free from the constant harassment of multiple and rival unionism provide opportunity for the establishment of more reasoned and responsible relationships between the parties.

2. Those industries whose products can be stock-piled prior to a strike or whose orders can be backlogged during a strike have little need for such programs. The long run effect of strikes in these industries may be inconsequential to total output, sales, and profit figures.
3. Industries in which automation has made substantail inroads into the performance of hitherto human job requirements may find themselves able to operate at near capacity in spite of a strike period.
4. Industries in which fixed costs are a relatively small percentage of total costs would have less need for such programs.
5. The more competitive the industry, the greater the number of firms and the more difficult it would be to attain widespread participation.
6. If industry-wide bargaining is accompanied by industry-wide strikes when attempts to reach an agreement fail, strike subsidy programs are--from a practical viewpoint--impossible.

Likewise, there are several considerations on the labor side that serve to explain why certain unions have only token programs. While I have indicated above that there are several exceptions, the general validity of these restraining factors remains intact. The limiting factors are:

1. Industrial unionism minimizes strike exposure, reduces the threat of rival unionism, adapts more easily to technological change, and provides more latitude for the solutions of mutual union problems than does multiple craft unionism. Because several of the major causes of instability and increased strike incidence are absent, interest in strike subsidies is lessened.
2. Unions whose members are employed in industries which can stockpile inventories and recoup business following a strike are often able to find overtime employment available to make up for lost income during a strike period. In these instances, union strike funds are of less consequence.
3. Situations wherein industry-wide strikes are employed by unions or where retaliatory lockouts are used by employers of non-struck firms in response to whipsaw strikes render strike benefit plans infeasible.
4. The economics of sheer size makes adequate strike plans in many small unions impossible. Declining union membership in other unions may mean that some plans already in existence may have to be abandoned.

5. Unions in very competitive industries where wage rates are typically low are often precluded from establishing strike plans because of funding difficulties.

6. In local, state, and federal governmental occupations, where union membership is expanding, strikes are illegal. In many strategic defense industries, the strike weapon is rarely used because of immediate federal intervention. When strikes do occur, their duration is usually quite short, Hence, in these instances, strike subsidies are either irrelevant or obsolete.

To summarize, it is apparent that strike subsidy devices are the product of certain almost unique sets of circumstances. The possibility that employer groups and unions--other than those already using such devices--will in the near future adopt similar programs seems remote. While it is true than on the surface it would appear that such devices would have an alluring appeal to all bargaining situations, this section of the study has demonstrated that the successful operation of such programs is sharply restricted to a rather limited set of conditions. The limited applicability of these devices becomes even more obvious when the actual mechanics of the existing programs are examined closely.

## The Devices Themselves

In the preceding chapters, each strike subsidy device was examined individually. Without restating their specific provisions, it is necessary to present a brief comparative summary of the devices before turning to the subject of their compatibility with the public interest.

### Management Devices

The type of administrative machinery required to supervise the employer plans varies. The airline plan requires no intermediary body; the newspaper plan employs a committee but its role is more supervisory than administrative with respect to the dispensing-of-funds-process; the two minor plans in agriculture and sugar have boards but they too serve no meaningful role in the procedures for providing benefits. The railroad plan, by contrast, has a committee that does serve an active role in the operation of the industry program.

Participation in the programs of the respective industries is high. The continued financial and tactical success of these plans requires that this pattern be continued. From a financial viewpoint, the ability of these programs to provide adequate benefits to struck participants and, simultaneously, to keep the cost of participation minimal is premised upon the assumption of widespread industry participation--especially of the major firms. As

for the tactical considerations, it is also of paramount importance that as many firms in the industry as possible belong. Otherwise, it is possible for the unions involved in a dispute to negate the entire purpose of these devices by striking only the participants. The non-participants would receive the benefits of sales to the customers of the struck firms without encountering any liabilities. Avoidance of such events was precisely the reason that these devices were established. Should the unions single out the non-participants for a strike, the firms protected by their strike subsidy program then are able to reap the benefits of the business of the struck non-participants and the strike subsidy program does not become involved. It is clear that non-participants are vulnerable to such tactics and undoubtedly such considerations are weighed by them when they decide not to become members.

With respect to contingent liability, the provisions of each plan differ. In all cases, however, each participant assumes an equal degree of relative liability. With the lone exception of the newspaper plan, all of the remaining programs contain a stipulation that requires additional payments beyond original premiums. Nowhere in the plans that contain this additional liability feature is mention made of any variation in the financial status of the individual members. A financially-hard-pressed

firm must either assume the additional liablitty or not participate. On the other hand, these weak sisters--which are the traditional targets of whipsaw strikes--are in far better financial position to weather such assaults with these plans than would ever be possible in their absence. Further, the plans which entail an additional liability characteristically have a very low basic premium--if any at all. Hence, the opportunity for the weaker firms to join these programs--and risk later extra assessments up to some established maximum--is enhanced. In the newspaper plan, there is no provision for additional premiums but the basic annual premium rate is quite high. For that reason, many of the smaller and marginal firms are prevented, by the costliness of membership, from joining.

As for the legality of these programs, two plans have been subjected to legal tests. The Mutual Aid Pact was approved by the industry's regulatory body; the Service Interruption Policy was upheld following a civil suit in the federal courts. In both cases, the courts found that the respective plans were in no way in violation of existing labor statutes. In the railroad decision, the court of original jurisdiction went even further, stating that strike insurance is specifically protected by the Clayton Act and the Norris-LaGuardia Act. The appellate courts refused to rule on this aspect of the original decision. In any event, these decisions have made clear

the fact that there are no legal barriers to employer mutual assistance as long as the program is limited exclusively to matters concerning labor relations.

In all of the plans, some form of eligibility requirement is imposed upon all would-be recipients. Should a struck firm fail to comply with these rquirements, it forfeits its claim for benefits. Typcially, the employer plans require adherence to the provisions of all applicable public statutes as a precondition for eligibility. Hence, these programs provide a positive incentive to individual firms to follow established procedures, and, as such, assist in the possibility of securing settlements. The newspaper plan represents an exception. The only stipulation that it requires for benefits is that the employer must offer to arbitrate the issues in direct dispute. The fact, however, that the employer may legitimately include additional subjects--such as international union rules--in the arbitration offer and still receive full coverage can serve to provoke greater hostility than was originally involved. Thus, in the newspaper situation, it is difficult to assess the true significance of this single eligibility requirement.

It is apparent that the various employer plans--while similar in objective--differ significantly in method. The explanation for their variance rests with the fact that each program has been tailored to the requirements and

specifications of its particular industry. While only certain industries are suited for the introduction of such devices, those which are suitable require specially adapted programs to meet their specific bargaining situation. The highly sucessful program of one industry might be a failure if transplanted in toto to another.

The Mutual Aid Pact operates effectively in the airline industry because the industry has only twelve trunk-line carriers--eight of which are participants. On all of the most profitable routes, there is usually more than one carrier. When one is struck, the direct competitors on these routes benefit directly from the misfortune on the struck carrier. Moreover, because the direct competitors differ on most routes that each carrier operates, many airline firms are beneifciaries when one suffers a work stoppage. The fact that there may be one other competitor on a particular route--but seldom more than two--means that it is a relatively easy proposition to detect a direct windfall gain during a strike period. In those situations wherein the windfall formula is complicated by other factors, the supplemental payments serve as a residual to assure that all members receive a minimum amount of coverage.

The railroad industry would find the airline plan unsatisfactory to its needs. In the railroad industry, there are seldom direct competitors on specific routes. A single city may be served by more than one railroad but,

more frequently, the train lines connect different cities. Therefore, it is unlikely that one line would sustain any notable windfall benefit in the event of a strike. When direct competition is present, it is generally restricted to several regional lines rather than being dispersed widely among many different carriers as is true in the airline industry.

The plans of both the airline and railroad industries are based upon the principle of self insurance. There is no commercial risk borne by any independent insurer. Self insurance is feasible in these industries because many of their members are among the nation's largest corporate and financial entities. Furthermore, due to the relative importance of uninterrupted operations in both industries to the national economy, government intervention can often be assured in both threatened and real strike situations. Hence, in the airline and railroad industries, the possibility that any particular dispute will actually erupt into an actual strike is at least partially mitigated. The newspaper industry, on the other hand, is composed largely of relatively smaller corporations and it can seldom rely upon any comparable degree of government assistance in the prevention or abbreviation of its labor disputes. Consequently, the newspaper industry has been impelled to place its program with an independent insurer who does assume a direct risk in underwriting the plan. The participants in

the newspaper program are, accordingly, relieved of any obligation for further assessments other than that required in the form of the initial premium. Such is not the case in the airline and railroad plans. Those firms which voluntarily decide to become members of those industry programs assume themselves the risk of additional payments which are key features of their strike subsidy devices.

The newspaper industry would find the airline plan incompatible with its bargaining structure. Most towns that have daily papers are one publisher towns. If a strike occurs, no windfall benefits are reaped by anyone. In the larger cities which generally have more than one daily, bargaining is usually conducted on a citywide association basis. If one newspaper is struck, the competitors typically also shut down for the duration of the work stoppage. Here again, there is no opportunity for windfall benefits to accrue to a competitor.

From this discussion, it is clear that the transferability of these programs is quite restricted. Each device is molded to fit the characteristics and need of the particular industry. Thus, it becomes apparent that not only are the industries which are suitable for such plans few in number, but also the possibility that any of the presently established programs could be transferred elsewhere is remote.

## Union Strike Subsidies

Four union strike subsidies have been reviewed. Of this group, union strike insurance never progressed further than the conceptual planning stage. Strike assistance funds provided by public and private sources have not--to date--achieved any status of consequence due to their isolated application, preference for payment in kind rather than cash, and tendency to base eligibility more upon need than on right. Therefore, the devices that deserve attention are limited to two programs: unemployment compensation payments to primary strikers and national union strike benefit plans.

As a rule, unemployment compensation payments are unavailable to primary strikers. Three special exceptions, however, do place such plans in the catagory of an active strike subsidy device. The most prominent case is in the railroad industry where primary strikers who have abided by the provisions of the prevailing labor statutes and union constitutional requirements are eligible for such funds as of their first day of unemployment. The two other situations involve the state laws of Rhode Island and New York. In both states, primary strikers may receive benefits, but only after long waiting periods have elapsed. Accordingly, it is obvious that it is only in several select and isolated instances that unemployment

compensation becomes entangled in labor disputes as a formal strike subsidy. It is also quite unlikely that the precedents established by these few exceptions will contribute to a future wider involvement of such funds in strikes.

With respect to the existing union strike benefit programs, their significance as a strike subsidy devices varies widely from union to union. Consequently, it is difficult to assess and to synthesize their role in any precise manner. The typical strike benefit program is quite modest in the amount given to individual strikers--especially when compared to earnings that are sacrificed during a strike period. Eligibility for funds is typically conditioned upon the adherence by the strikers to prescribed regulations and requirements imposed by each national union. Moreover, most programs make funds available only after a specified waiting period has expired. The likelihood that those union currently without similar programs will in the near future adopt such programs is small. The bargaining conditions which have made strike benefit programs unneeded, impractical, or unadaptable in the past will not be substantially altered in the near future. Thus, the fact remains that with but a few notable exceptions the situations in which union strike benefit programs actually constitute meaningful strike subsidy devices are most commonly found in the airline, newspaper, and railroad industries.

The Public Interest

Attention now needs to be directed toward the compatibility of the strike subsidy devices discussed in this study with the nation's avowed labor policy of protecting and furthering the institution of collective bargaining. Prior to undertaking such an examination, it is again necessary to place the topic in perspective. In most bargaining situations, the issue of strike subsidization is either nonexistent or such a minor one as to be insignificant. It is only in the airline, newspaper, and railroad industries that these mutual assistance programs have become both widespread in practice and substantial in amount. In these industries both labor and management rely extensively upon such devices. As previously discussed, it seems quite unlikely that these subsidies will spread in any noteworthy manner beyond these present situations. Consequently, any challenge presented by strike subsidies to the functioning of the collective bargaining process will be confined to a relatively small sector of our nation's industrial complex. Their limited applicability does not mean, however, that their evolution is of no consequence.

Putting aside the assertions made by spokesmen for labor and management who seem to adhere to the belief that these devices are providential if employed by their side but heresy if used by the other, two viewpoints have become

prominent.[5] One position maintains that the evolution of strike subsidy devices is but a contemporary manifestation of the historic principle of voluntarism that has characterized the course of labor and management relations in this country. This thesis is that both labor and management in these industries have been confronted with an extremely unstable bargaining climate which has led to frequent threatened and actual strikes. In response, both sides have sought themselves to find methods of minimizing the rising costs of an actual strike. The public policy conclusion of this line of thought is that as long as the programs are privately financed and operated and are not arbitrarily used to exclude any who wish to participate, public interference is undesirable. Strong support for this position has come from the first Labor Study Group[6] of the Committee for Economic Development. In its survey of labor policy in the United States, this distinguished panel concluded as follows:

> Another employer bargaining device that has achieved prominence recently is strike insurance or

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[5] E.g., see "Teamwork Cuts Strike Losses," Nation's Business (July, 1960), pp. 76-79 and John Barry, "Strike Insurance," American Federationist (March, 1961), pp. 17-20.

[6] To review the membership of this group, see supra, Chapter VII, footnote 14.

> mutual aid of one kind or another in the event of a strike. Typically, this is a device to relieve pressure on a struck employer or employers whose competitors continue operations. Suggestions have been made to strip employers of this weapon. Here again, however, strike insurance for employers seems little different from a union strike fund or the payment of privately financed strike benefits to union members. We oppose efforts to curtail the use of private strike insurance whether by employers or unions.[7]

The voluntarism supporters are quick to state their unequivocal opposition to any involvement of public funds--as unemployment compensation--as forms of strike subsidization.[8]

A position which conflicts with the indifference espoused by the voluntarism advocates has been raised by Secretary of Labor W. Willard Wirtz. In an address before the National Academy of Arbitrators in 1963, the Secretary expressed a fear that increasing public criticism over the failure of several major negotiation efforts to resolve differences without resorting to the use of the strike weapon was endangering the future of collective bargaining. One factor cited in the address as contributing to this growing unrest was the role of strike subsidies. He stated:

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[7]Committee for Economic Development, The Public Interest in National Labor Policy, A REport by the Labor Study Group (New York: Committee for Economic Development, 1961), pp. 135-136.

[8]Ibid., p. 136.

> It is more frequently true now than it used to be that a shutdown will hurt the public badly before it hurts one party to it or the other party enough that someone has to cry uncle. Strike insurance programs for employers are intensifying this factor. It has been a significant fact in the New York newspaper case that during most of its first month the Printers were receiving up to $90.00 a week in strike benefits and the Publishers were sharing in a substantial strike insurance program.[9]

Similarly, an earlier editorial in Business Week lends support to Wirtz's position. The editorial stated:

> Strike insurance, if widely adopted, would help management to hold out even longer. And it would inevitably lead the unions to countervailing devices that would let them match, or more than match, management's ability to resist.
>
> Those who get hurt, of course, are the members of that long suffering group known as the innocent bystanders. The result will be to increase the pressure to find other methods of settling industrial disputes--and ones that may not be agreeable to either companies or unions. The group that really needs strike insurance is the public.[10]

The proponents of this more cautious approach to the role of strike subsidies in collective bargaining have had little to say concerning the actual public policy recommendations that stem from their postion. The only specific action taken to date by any public authority against these programs was the 1956 ruling in New York by the State Attorney General, Jacob K. Javits, which

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[9]W. Willard Wirtz, "The Challenge to Free Collective Bargaining," Proceedings of the Sixteenth Annual Meetings of the National Academy of Arbitrators (Washington: Bureau of National Affairs, 1963), p. 300.

[10]"Strike Insurance," Business Week (September 17, 1960), p. 202.

held that the writing of strike insurance policies was "contrary to public policy." The ruling was not legally challenged and, given the recent precedents in the railroad case, it is doubtful that such a ban would--if tested--be sustained.

An evaluation of the public interest aspects of strike subsidy devices should begin with an initial statement concerning the prevalence of the practice. As discussed earlier, it is a conclusion of this study that these devices are a result of a limiting set of bargaining structure characteristics that serve both to explain their evolution and to preclude the likelihood of their spread elsewhere. It is very unlikely that reliance upon such programs will spread beyond their present boundaries. Therefore the fear expressed in the aforementioned Business Week editorial that these devices may become commonplace seems quite unfounded.

The role assumed by these programs in the bargaining process itself needs also to be examined. Two interrelated issues are involved: the effect upon the will of the parties to resist and the resulting impact upon strike incidence. It is of course true that the knowledge of the availability of a strike subsidy device does to some extent reduce the prospective monetary losses associated with failure to resolve a dispute. The significance of this awareness, however, must not be

overly exaggerated. To this writer, it is difficult to imagine that any party to a labor dispute would seriously consider a strike subsidy device--with its eligibility conditions, limited benefits, and waiting period requirements--as a real alternative to be weighed against the benefits to be achieved from uninterrupted operations. Too many other factors are involved in the actual negotiation process that are far more significant explanations of actual bargaining impasses. A few of these factors are: the nature and past history of negotiations between the parties; the feelings of the union membership or the corporate leadership on certain key issues; the security of the union; the fear of loss of customer loyalties; the profit position of the firm; and, most importantly, the increasing complexity of the bargaining topics that confront negotiations today. Moreover, since both sides in the airline, newspaper, and railroad industries are aware that the other party has access to such programs, there is no tactical advantage derived from the knowledge of having later recourse to such plans if an accord cannot be reached. The availability of assistance to both bargaining participants serves to offset its pre-strike importance. Thus, while recognizing that strike subsidy devices exert some influence upon negotiations, it is doubtful that their effect upon the bargaining

resistance of the parties or upon strike incidence is more than of minor consequence.

One final question remains to be discussed with respect to public policy and strike subsidization: do these programs tend to prolong a strike once one occurs? Since they only become operational in the event of an actual strike, it is logical--but not conclusive--to deduce that a subsidized strike will last longer than a non-subsidized strike. Lengthy strikes have become somewhat common in the newspaper industry; less so in the airline industry; and least so in the railroad industry. In the latter two industries, however, the greater involvement of the government in their disputes may be part of the explanation of the shorter strike durations. Moreover, the combination of increasingly complex bargaining topics and of complicating background forces created by accelerated technological advances and a persistently high rate of unemployment means that it is difficult to appraise definitively the impact of strike subsidies in actual strikes. Nevertheless, it does appear that the effect of these programs upon the course of any given strike is unpredicable. The situation envisioned by Secretary Wirtz in which the public is harmed before the strike participants are seriously affected is quite conceivable. Because of the existence of these devices, either party to a dispute could remain uncompromising in

its position for a longer period than would be otherwise rational. Hence, while it is debatable whether or not strike subsidies prolong strikes, it is clear that these devices contribute nothing to the actual resolution of differences once a strike has begun. Since neither a conclusive indictment nor a complete exoneration of the effects of these devices upon strike duration is feasible, the uncertainty implies to this writer that minimum public safegrards should be implemented.

The increasing interdependency of our society--alluded to in the discussion of the remarks made by Professor Chamberlain and Secretary Wirtz in the introduction--means that public policy may not be able to remain indifferent to the rise of possible impediments to rapid settlements. The stakes are too high. The future of collective bargaining in these industries--already under attack from some quarters--may well rest with the recognition by both labor and management officials of the need to place more reliance upon measures which encourage accommodation of differences and less upon economic weaponry. When differences do occur--as they inevitably will from time to time--emphasis should not be placed upon methods that reward bargaining intransigency. It is hoped that the role of strike subsidy devices is analogous to the effects of an anesthesia which temporarily relieves some of the pain associated with the disorder while prompt

corrective measures are undertaken. It is not the objective of strike subsidy devices to numb the parties to economic losses and thereby lengthen the settlement process. To the degree that these programs assume an ancillary role of merely extending assistance to a struck party, they should be tolerated; to the degree that they hamper good faith bargaining, they represent a potential threat to collective bargaining and the public interest.

Thus, the conclusion to be drawn is not that these private strike assistance programs should be banned; but, rather that they should be supervised. If future events demonstrate that these devices do represent--as the C. E. D. Labor Study Group believes--only a continuation of the tradition of voluntarism in labor and management affairs, the operation of these programs will in no way be impaired by the recommendations of this study. Conversely it may be that the fears of Secretary Wirtz and former Attorney General of New York Javits will be realized. Strike duration, and intransigent bargaining could become even greater problems in these industries than they have been in the past. Should this prove to be the case, the recommendations below will assist an enlightened public evaluation of the degree to which these programs contribute to such undesirable trends.

## Recommendations

Specific recommendations concerning the operations of the individual devices were offered at the end of each chapter. Those point need not be repeated. The broader public policy recommendation are as follows:

1. With respect to employer strike subsidy programs, minimal reports--similar to those currently required by the C. A. B. of the participants in the Mutual Aid Pact--should be required of all such mutual assistance arrangements. In the regulated industries, the reports should be submitted to the relevant regulatory body. In the non-regulated industries, the reports should be filed with the Bureau of Labor-Management Reports of the Department of Labor. Section 203 of the Landrum-Griffin Act (the employer reporting section) should be amended to require such action. These reports should be filed annually and they should contain the following information: the particular disputes in which such programs were involved; the amount of benefits received by each struck participant during the year; and the amount contributed by each non-struck participant to the program during the year. These reports should be available for public inspection and evaluation either at the main office of the relevant regulatory body or at the public disclosure facilities of of the Bureau of Labor-Management Reports in Silver Spring, Maryland.

2. Section 201(b) of the Landrum-Griffin Act (the labor organization reporting section) has already been interpreted by the Bureau of Labor-Management Reports to require that unions must annually report the amount paid-out in the form of strike benefits. It would be more useful for evaluation purposes if the Bureau would require that these aggregate figures be broken down into the amounts actually paid in particular disputes. The Bureau should incorporate such a stipulation in its future annual report forms.

3. The payment of unemployment compensation benefits to primary strikers interjects the public sector into the realm of strike subsidization. The most notable and common characteristic of the other devices discussed in this paper is their private nature. Consequently, this writer is in agreement with the recommendation of the C. E. D. Labor Study Group on this matter. The state laws of New York and Rhode Island and the pertinent section of the Railraod Unemployment Insurance Act should be amended to eliminate the eligibility of primary strikers for such funds.

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# APPENDICES

## APPENDIX A

The following is a brief chronological listing of the major events in the development of the Mutual Aid Pact of the airline industry.

| | |
|---|---|
| October 30, 1958 | Six airline carriers (American, Capital Eastern, Pan American, Trans World, and United) signed the original Pact which was effective retroactively to October 20, 1958. The Pact was based upon a "windfall payments" concept wherein the increased revenue received by a Pact member attributable to a strike against another Pact member--less applicable direct expenses--would be returned to the struck carrier. |
| November 3, 1958 | The Pact was officially filed with the Civil Aeronautics Board (C. A. B.) and assigned the title of Agreement of C. A. B. 12633. |
| May 20, 1959 | The C. A. B. in a 4-1 vote issued its Order No. E-13899 which extended tentative approval to the Pact subject to the deletion of a portion of a clause which related to the routing of traffic by a struck carrier to another Pact member. This approval was given without an evidentiary hearing having been held. |
| March 22, 1960 | The Pact members filed an amendment executed March 7, 1960, to broaden the scope of the Pact to provide payments to a struck carrier member for strikes called in the absence of the establishment of a Presidential Emergency Board if the struck carrier has in all respects acted in compliance with the Railway Labor Act. |
| March 22, 1960 | National, Braniff, and Northwest joined the Pact. |

| | |
|---|---|
| April 7, 1960 | Continental joined the Pact. |
| April 12, 1960 | Objections to the amended Pact were filed with the C. A. B. by six airline unions (Airline Pilots, Airline Dispatchers, Brotherhood of Railway and Steamship Clerks, Flight Engineers, International Association of Machinists and the Transport Workers Union) and the Association of Air Transport Unions (a combination of the AFL-CIO unions associated with the airline industry--it has been inactive since November, 1960, and, according, it has dropped out of the proceedings). |
| June 20, 1960 | The C. A. B. ordered an investigation of the amended Pact (Order E-15413). |
| October 24, 1960 | The Pact was renewed until December 31, 1961. In addition, an amendment was added which stated that withdrawal from the Pact by any member would be effective as of December 31 of any year after 1960. At least 60 days prior written notice was required of such an intention whereupon any other member could withdraw, effective the same date upon 30 days prior written notice. |
| April 3, 1961 | The C. A. B. approved the merger of Capital Airlines with United Airlines under the "failing business" doctrine (Order E-16605). |
| June 1, 1961 | Capital merged with United Airlines. |
| July 28, 1961 | National advised the members of the Pact that it wished to withdraw as of that date; National, however, was advised by United that it could not withdraw until December 31, 1961, under the terms of the amended Pact. |
| October 27, 1961 | Continental gave notice to the other Pact members that it planned to withdraw from the Pact as of December 31, 1961. |
| November 2, 1961 | National filed notice of its intention to withdraw from the Pact as of December 31, 1961. |

| | |
|---|---|
| March 26, 1962 | The Pact members filed several amendments executed March 22, 1962, and effective December 31, 1961. The two most important additions pertained to the extension of coverage to strikes when a Presidential Emergency Board issued its report without specific recommendations for settlement and to the establishment of the "supplementary payments" provision which guaranteed that at least twenty-five per cent of a total carrier's "normal air transport operating expenses" would be covered in the event of a strike.[1] |
| May 14, 1963 | The initial decision of the Hearing Examiner was issued upholding the validity of the "windfall payments" and the "supplemental payments" provision of the Pact. |
| July 11, 1963 | The C. A. B. issued order E-19796 exercising its right of discretionary review of the Examiner's initial decision. |
| October 29, 1963 | The carrier parties filed a memorandum stating that a common agreement had been reached for establishing a single formula for the computation of payments under the Pact. |
| July 10, 1964 | The C. A. B. issued Order E-21044 in which it extended approval to the Mutual Aid Pact--in its entirety--for a three year period from the date of this decision. The vote was three in favor, one dissenting in part, and one dissenting in total. |

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[1]With the adoption of the latter amendment, Continental Airlines rejoined the Pact as of this date.

# APPENDIX B

The major portion of Part I of this paper was devoted to a discussion of the formal subsidy programs conceived by management in the airline, railroad, and newspaper publishing industries. Looking at the other side of the market in these same three industries, the following three tables are designed to determine the specific national unions in these industries that provide strike benefits and to indicate the actual magnitude of these payments. The data was compiled from reviewing the annual LM-2 (for unions whose gross receipts exceed $30,000 a year) and LM-3 (for unions whose gross receipts are less than $30,000 a year) financial report forms as required under the Labor-Management Reporting and Disclosure Act of 1959. These individual union reports are on file with the Bureau of Labor-Management Reports of the Department of Labor and were reviewed at their facilities in Silver Spring, Maryland on August 26 and 27 and September 13, 1963.

TABLE 9.--National union strike benefits in the railroad industry, 1959-63.

| Union | Afil. | For the Reporting Period Ending | Strike Benefits Paid for Year Ending | | | | |
|---|---|---|---|---|---|---|---|
| | | | 1959 | 1960 | 1961 | 1962 | 1963 |
| Firemen and Oilers; Inter. Brotherhood[1] | AFL-CIO | Mar. 31 | $ -- | $ 0 | $ 3,280 | $ 4,271 | $ 2,422 |
| Locomotive Engineers; Brotherhood of | Ind. | Dec. 31 | 80,102 | 186,936 | 63,260 | 115,104 | |
| Locomotive Firemen and Enginemen; Brotherhood of | AFL-CIO | Dec. 31 | 422,260 | 123,508 | 12,713 | 41,311 | |
| Maintenance of Way Employees; Brotherhood[2] | AFL-CIO | Mar. 31 | -- | 7,960 | 24,321 | 23,236 | 35,439 |
| Porters; Brotherhood of Sleeping Car | AFL-CIO | Jul. 31 | -- | 0 | 0 | 0 | |
| Railroad Signalmen; Brotherhood of | AFL-CIO | Jun. 30 | -- | 0 | 0 | 0 | 0 |
| Railroad Telegraphers; the Order of | AFL-CIO | Dec. 31 | 0 | 0 | 0 | 0 | |
| Railroad Trainmen; Brotherhood of | AFL-CIO | Dec. 31 | 7,602 | 1,178,754 | 160,208 | 498,246 | |
| Railroad Yardmasters of America | AFL-CIO | May 31 | -- | 0 | 0 | 0 | 0 |
| Railroad Yardmasters of North America | Ind. | Apr. 30 | -- | 0 | 0 | 0 | |
| Railway Carmen of America: Brotherhood | AFL-CIO | Mar. 31 | -- | 60,455 | 0 | 0 | 33,780 |
| Railway Conductors and Brakemen: Order of | Ind. | Dec. 31 | 26,184 | 15,617 | 16,096 | 77,974 | |
| Railway Employees, Inter. Assoc. of[3] | Ind. | Aug. 31 | -- | 0 | 0 | merged) | |
| Railway Employees: Inter. Assoc. of and Railway Trainmen and Locomotive Firemen; Assoc. of | Ind. | Jul. 31 | -- | -- | -- | 0 | |
| Railway Patrolmen's Inter. Union | AFL-CIO | Jun. 30 | -- | 0 | 0 | 0 | |

TABLE 9 -- Continued

| Union | Afil. | For the Reporting Period Ending | Strike Benefits Paid for Year Ending 1959 | 1960 | 1961 | 1962 | 1963 |
|---|---|---|---|---|---|---|---|
| Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of | AFL-CIO | Dec. 31 | $ 0 | $ 3,022 | $ 0 | $ 0 | |
| Railway Supervisors Assoc.; the American | AFL-CIO | Mar. 31 | -- | 0 | 0 | 0 | 0 |
| Railway Trainmen and Locomotive Firemen; Assoc. of[3] | Ind. | Jul. 10 | -- | 0 | 0 | (merged) | |
| Switchmen's Union of North America | AFL-CIO | Apr. 30 | -- | 0 | 0 | 0 | 0 |
| Train Dispatchers Assoc.; American | AFL-CIO | Jun. 30 | — | 0 | 0 | 0 | 0 |
| Transport Workers Union of America | AFL-CIO | Aug. 31 | -- | 3,950 | 21,300 | 25,500 | |

[1]In addition to the sums here shown as paid out to individuals, the national paid out under "financial assistance to locals" the amounts of $30,597 and $20,993 in 1962 and 1963 respectively. The classification is not defined as to whether these payments constituted strike benefits or were for other purposes.

[2]All of these figures presented for this union appeared under the undefined classification of "wage and strike movements."

[3]Both of these unions were merged December 31, 1961 into the Inter. Assoc. of Railway Employees and the Assoc. of Railway Trainmen and Locomotive Engineers.

TABLE 10--National union strike benefits paid in the airline industry, 1959-63

| Union | Afil. | For the Reporting Period Ending | Strike Benefits Paid for Year Ending | | | | |
|---|---|---|---|---|---|---|---|
| | | | 1959 | 1960 | 1961 | 1962 | 1963 |
| Airline Communication Employees Association[1] | Ind. | Aug. 31 | -- | 0 | (merged) | | |
| Airline Dispatchers Association | AFL-CIO | Sept. 30 | 0 | 0 | 0 | $ 0 | |
| Airline Pilots Assoc.; Inter. | AFL-CIO | Sept. 30 | -- | $ 264,928 | $1,591,568 | 815,667 | |
| Communication Workers of America | AFL-CIO | Mar. 31 | -- | -- | 0 | 0 | 0 |
| Flight Engineers' International Association | AFL-CIO | Dec. 31 | 108 | 115,323 | 101,533 | 185,777 | |
| Machinists, International Association of[2] | AFL-CIO | Dec. 31 | $4,499,840 | 4,871,084 | 2,352,875 | 3,999,248 | |
| Airline Stewards and Stewardesses[3] | AFL-CIO | Jun. 30 | -- | -- | -- | 0 | 0 |

[1]The union was merged into the Communication Workers of America (AFL-CIO) as of September 1, 1960.

[2]These figures include the total amount poid out by the union to its members in all of the industries in which it bargains.

[3]Currently, the union is under the trusteeship of the Transport Workers Union (AFL-CIO).

TABLE 11.--National union strike benefits paid in the newspaper industry, 1959-63.

| Union | Afil. | For the Reporting Period Ending | Strike Benefits Paid for Year Ending | | | | |
|---|---|---|---|---|---|---|---|
| | | | 1959 | 1960 | 1961 | 1962 | 1963 |
| Engravers and Sketchmakers, Friendly Society of[1] | Ind. | Jun. 30 | -- | ⊖ | $ 75 | $ (merged) | |
| Lithographers of America; Amalgamated[2] | Ind. | Jun. 30 | -- | $ 566,451 | 416,532 | 22,414 | |
| Machine Printers and Engravers Association of the U. S. | Ind. | Dec. 31 | -- | ⊖ | 16,678 | 4,798 | |
| Newspaper Guild; American | AFL-CIO | Apr. 30 | -- | -- | ⊖ | 112,498 | $1,513,647 |
| Newspaper and Mail Deliverer's Union of New York and Vicinity | Ind. | Dec. 31 | $86,395 | 7,800 | 10,400 | 12,800 | |
| Photo-Engravers' Union of North America; Inter. | AFL-CIO | May 31 | -- | 71,768 | 22,428 | 218,163 | |
| Plate Printers', Die Stampers' and Engravers' Union of North America, Inter. | AFL-CIO | Apr. 30 | -- | ⊖ | ⊖ | ⊖ | ⊖ |
| Printing Pressman and Assistants' Union of North America Inter. | AFL-CIO | Jun. 30 | -- | 11,175 | 7,420 | 213,775 | |
| Stereotypers' and Electrotypers Union, Inter. | AFL-CIO | Apr. 30 | -- | 119,514 | 176,705 | 231,217 | 545,622 |
| Typographical Union; Inter. of[3] | AFL-CIO | May 20 | -- | 2,207,919 | 1,924,099 | 2,449,263 | |

[1]Merged with the Machine Printers Union (Ind.) as of October 1, 1960.

[2]The figures are classified under the title "Emergency Fund."

[3]In addition, the national paid out under the title of "special assistance to member locals" the amounts of $402,847 (in 1960), $691,160 (in 1961) and $598,323 (in 1962).

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