SENATE—*Monday, June 15, 1992*

(Legislative day of Thursday, March 26, 1992)

The Senate met at 2 p.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Senate Chaplain, the Reverend Richard C. Halverson.

Dr. Halverson.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

"We the people of the United States, in order to form a more perfect union* * *."

Almighty God, infinite, eternal, omniscent, and unchanging, we give You thanks that in the thinking of our Founding Fathers, the people were sovereign. That they conceived government in three parts: Executive, legislative, and judicial, because they knew that human nature was fallible, and could be deceived, overcome, and misled by power; therefore in a fundamental sense, government could not be trusted. Hence a system of checks and balances, dividing power, and providing that decisions would rest with a majority.

Thank you God of truth, that in their wisdom they also realized that without elected representation, people could gravitate to anarchy and chaos, and be vulnerable to tyranny. Assuming the potential of evil in human nature, they also believed that people were capable of reasonable and righteous judgment. We pray therefore, God of our fathers, that in this year of strange political maneuvering, politicians and the press will not treat the people as though they are mindless, subject to manipulation by clever rhetoric, and subtle campaign tricks.

Gracious God, forbid that this election year should be relegated to deceptive, manipulative public relations schemes. In the name of the righteous one, Jesus, who is truth. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mr. ROBB). The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 15, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHARLES S. ROBB, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. ROBB thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

THE JOURNAL

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal has been approved, and that the time for the two leaders has been reserved for their use later in the day?

The ACTING PRESIDENT pro tempore. The majority leader is correct.

SCHEDULE

Mr. MITCHELL. Mr. President, today the period for morning business is extended until 2:30 p.m. with Senators permitted to speak therein for up to 5 minutes each.

At 2:30 today the Senate will resume consideration of S. 55, the striker replacement bill, with the modified committee substitute pending.

As a reminder to Senators, a cloture motion was filed on Friday on the committee substitute, and a vote on that cloture motion will occur tomorrow, Tuesday, at 2:15 p.m. Any Senators who wish to file first-degree amendments to the committee substitute must do so by 2:15 p.m. today.

There will be no rollcall votes today. For those Members who wish to debate the provisions of the bill, the bill will be open for debate throughout the day.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROPOSED CONSTITUTIONAL AMENDMENT PROVIDING FOR A RUNOFF ELECTION FOR PRESIDENT AND VICE PRESIDENT

Mr. GORTON. Mr. President, on Thursday last, together with several of my colleagues, I introduced a joint resolution to amend the Constitution of the United States by striking the 12th amendment and assuring that the election of the Presidency of the United States would be conducted by the people of the United States acting through their States rather than by the House of Representatives.

At this point, as everyone in the country is well aware, we are in the midst of an almost unprecedented Presidential campaign, a campaign in which there are three very serious candidates for the Presidency, each of whom, if the election were held today, and people voted in the way in which they answer pollsters would receive a substantial number of votes in the electoral college. Almost certainly that number of electoral votes would be sufficient so as to prevent any of those three candidates from receiving the majority of the vote in the electoral college, a majority which at the present time is 270 electoral votes.

Under those circumstances, of course, this body would elect a Vice President of the United States in a relatively simple transaction, able to vote only on the top two candidates in electoral votes with each Senator having one vote.

The situation with respect to the Presidency, however, is much more complicated and extraordinarily troubling. The Members of the House would be directed to choose among the three top candidates for President but, rather than each of the 435 Representatives having a single vote, each State would have a single vote with a majority of the membership in 26 States; that is to say, a majority of the 50 States being required to elect the President. Thus, Vermont and California would have one vote each, Vermont's cast by its single Representative, California by a majority of its 52 Representatives, with the very real chance that large States like California would be unable to find a majority for any candidate and therefore would be deprived entirely of their vote.

It has been the opinion of this Senator for some time that the duty imposed on Members of Congress under those circumstances would be an awesome one, a duty which transcends political party. It has been the opinion of

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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this Senator that he would feel morally and ethically bound to vote for the candidate for Vice President who had received the largest number of popular votes in the country as a whole, and it is the belief of this Senator that House Members should probably consider themselves so bound as well.

There are, of course, many ways in which House Members could vote. They could vote their party. They could vote for the person who carries the most votes in their districts, in their States, or in the country as a whole, with variations relating to the electoral vote rather than the popular vote. The disaster which would befall this Nation, however, should we elect a President who had not even received a plurality of the popular vote, is something that this Senator does not like to contemplate.

And while this Senator believes that after 2 months of intense attention to this proposition, from a deadlocked November election until a January meeting of the Congress of the United States, would very likely result in the election of the candidate who had finished first, I believe that it behooves us at this point to change the system to assure that proposition.

As a consequence, the constitutional amendment, which I have introduced with a number of my colleagues, would say that if there is no majority in the electoral college in the November election, then 3 weeks later there would be a runoff election in which only the top two candidates in the electoral college would appear on the ballot. That would, except for the remote possibility of a 269-to-269 tie in the electoral college, mean that we would ultimately have a President who had the mandate of a majority vote across the United States of America.

We would avoid the politics of an election in the House. We would be able to concentrate on a President who at least began his or her career with a true mandate from the people of the United States.

It is very difficult to imagine, Mr. President, that we can actually pass and have ratified a constitutional amendment of this scope between now and the date of the November election. I believe that it is important to discuss the issue and pass such a constitutional amendment in any event because it is likely the situation with which we find ourselves faced this year is going to repeat itself in future years as party structures seem to weaken.

In addition, Mr. President, I think it very important that we consider this kind of constitutional amendment in the Congress and give States at least the opportunity to ratify it.

I was, for example, over the weekend informed of a conversation between a friend and a Governor of a State, not my own, who said if it looked like the election were going to go to the House of Representatives, he would call a special session of his legislature for the weekend before the general election in order to pass such a constitutional amendment, because he regarded with such horror an election of the President by the House of Representatives.

That encourages me to press forward. I hope the Committee on the Judiciary will hold hearings on this proposal as well as the proposal of the distinguished Senator from Arkansas [Mr. PRYOR] because we are faced with the potential, very real potential, of a constitutional crisis. And I believe it behooves us now when we do not know what the result is going to be to deal promptly and wisely, in such a fashion that we have at least done what we can do to prevent that crisis from taking place.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RETIREMENT OF FREDERICK C. PIERCE, CHIEF U.S. PROBATION OFFICER, DISTRICT OF NEVADA

Mr. BRYAN. Mr. President, I rise today to recognize one of Nevada's dedicated citizens on the event of his retirement. On June 30, 1992, chief U.S. probation officer for the District of Nevada, Frederick C. Pierce, will retire after 31 years of Federal service.

Chief Pierce has watched the District of Nevada, Las Vegas, grow tremendously. When he first arrived in Las Vegas in 1967, he was part of a staff of only two probation officers. Today, upon his retirement, the district now has offices in Las Vegas and Reno. Additionally, the district has sworn in 34 officers and 21 support staff; the majority of this growth was during Chief Pierce's tenure. This undoubtedly exemplifies the tenacity and loyalty he has had for his job, Nevada, and the United States.

Chief Pierce attended the University of Southern California on a football scholarship where he majored in public administration and criminal Justice. He played in the 1955 Rose Bowl loss to Ohio State. After graduating from USC he served 6 months active duty with the Army Reserves and then transferred to the Air Force Reserves. In 1958, Chief Pierce became a California parole officer and then a police officer with the Pasadena Police Department. He was appointed a U.S. parole officer in Los Angeles in 1961 and transferred to the District of Nevada in 1967.

The State of Nevada will miss Fred Pierce and his commitment to justice. However, he has left us with a legacy of dedication and diligence that the probation office will surely build upon in the years to come.

On June 19, friends, family, and colleagues will be joining together to bid Chief Pierce farewell and thank him for his service. I am disheartened that I will be unable to attend, but I would like to extend him my best wishes and many thanks for his service to the State of Nevada.

THE WOMEN AGAINST RAPE ORGANIZATION

Mr. LAUTENBERG. Mr. President, I rise today to commend Women Against Rape [WAR] for their invaluable service to the residents of southern New Jersey. The State of New Jersey has just completed Rape Prevention Month, and I would like to take this opportunity to acknowledge WAR's efforts to raise public awareness of violence against women.

WAR's counselors provide assistance to victim of rape by escorting them through grand jury and trial proceedings and also by guiding victims through medical and police procedures. The compassionate volunteers provide hands to hold and shoulders to lean on throughout this traumatic experience. Last year, WAR's 24-hour hot line responded to 726 crisis calls from first time clients and provided immediate crisis intervention services. Their weekly group meetings and private counseling services have touched the lives of victims that would have no where else to turn for help.

Another special service that WAR provides is in the area of crime prevention and rape awareness workshops. In 1991, WAR went to schools and civic organizations in southern New Jersey and educated close to 7,000 people on rape and violence. Through education, WAR has been able to combat the physical and emotional scars of rape and prevent people from becoming victims.

Mr. President, the volunteers of the Women Against Rape organization should be applauded for their commitment to others in need of emotional support. I thank the organization for their good work and extend my best wishes to them in the future.

SISTER SOULJAH'S STATEMENT CHALLENGED

Mr. BYRD. Mr. President, as so often happens, much of the political rhetoric emanating from this year's Presidential campaign is predictable and unspecific, and often aimed at the parties' choirs and amen corners.

However, this past weekend, Arkansas Gov. Bill Clinton spoke at a luncheon of the National Rainbow Coalition here in Washington. Among his comments, governor Clinton directly responded to remarks reported by the

Washington Post in a recent interview with Sister Souljah, a currently popular—popular in some quarters, of course—"rap" singer.

According to the Post's article on the interview, and reconfirmed by the taped record of Sister Souljah's interview remarks, the singer said:

If black people kill black people every day, why not have a week and kill white people? So if you're a gang member and you would normally be killing somebody, why not kill a white person?

Mr. President, why advocate killing anyone, white or black?

In response, Governor Clinton told the luncheon audience, recalling that Sister Souljah had appeared on a panel before the Rainbow group on Friday evening.

You had a rap singer here last night named Sister Souljah. * * * Her comments before and after Los Angeles were filled with a kind of hatred that you do not honor today or tonight. * * * If you took the words "white" and "black" and reversed them, you might think David Duke was giving that speech.

I want to congratulate Governor Clinton for his courage in speaking the minds of millions of people in this country—black, white, brown, yellow, and other. Dr. Martin Luther King, Jr., proclaimed in ringing words in this very city that he had a dream of a day when people would judge one another by the content of their character instead of the color of their skins.

That, Mr. President, has become the hope of men and women of good will and of all races. That is the hope of our future as Americans. We have become an increasingly multiracial society and we can no longer afford the luxury of race-baiters, regardless of whether they are black or white or whether they are women or men.

In a society composed of people of so many backgrounds and so many varying values, there is no room for calls to random murder and mayhem against other people, particularly based on the color of their skins. American society has problems, and we must solve those problems. But we have come too far for responsible leaders of this society to remain silent in the face of reckless calls for murder and mayhem. Are not the quavering words of Rodney King a wiser counsel for this society: "Please, can't we get along?"

Again, I commend Governor Clinton for his rebuke of such blatantly inflammatory rhetoric and for reminding the country that no race has a monopoly on racist provocation and demagoguery. I hope that he and other Presidential candidates will take the same high road and pursue rhetoric and themes that will further unite us as Americans instead of Balkanizing us into mutually hostile ethnic enclaves.

A SALUTE TO WISCONSIN'S 32D INFANTRY BRIGADE

Mr. KASTEN. Mr. President, I rise today to salute Wisconsin's 32d Infantry Brigade—the Mighty Red Arrow—as it commences its annual training for 1992.

Early this year, the Secretary of Defense proposed eliminating the 32d Infantry Brigade. I disagreed with that proposal, and this year's training exercise will demonstrate how effective and efficient the 32d Infantry Brigade really is.

The story behind the 32d Infantry Brigade is truly an impressive one. Units that are now part of the 32d have served with distinction in the Civil War and World Wars I and II. Today, the 32d Infantry Brigade is composed of members stationed in some 35 Wisconsin communities.

All Wisconsinites are proud of the great accomplishments of the Mighty Red Arrow, and I join them in looking forward to its future successes.

TODAY'S "BOXSCORE" OF THE NATIONAL DEBT

Mr. CRAIG. Mr. President, Senator HELMS is in North Carolina recuperating following heart surgery, and he has asked me to submit for the RECORD each day the Senate is in session what the Senator calls the "Congressional Irresponsibility Boxscore."

The information is provided to me by the staff of Senator HELMS. The Senator from North Carolina instituted this daily report on February 26.

The Federal debt run up by the U.S. Congress stood at $3,942,237,897,639.51, as of the close of business on Thursday, June 11, 1992.

On a per capita basis, every man, woman, and child owes $15,347.87—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

CONFIRMATION OF REGINALD BARTHOLOMEW AS UNITED STATES PERMANENT REPRESENTATIVE ON THE COUNCIL OF THE NORTH ATLANTIC TREATY ORGANIZATION

Mr. WARNER. Mr. President, I rise today to congratulate Mr. Reginald Bartholomew on his June 12, 1992, Senate confirmation as the U.S. Permanent Representative on the Council of the North Atlantic Treaty Organization, with the rank and status of Ambassador Extraordinary and Plenipotentiary. Mr. Bartholomew is currently serving as Under Secretary of State for Coordinating Security Assistance Programs.

Mr. Bartholomew has an impressive record of government service, beginning in 1968 at the Department of Defense. He has served with distinction at the Department of Defense, National Security Council and the Department of State. Prior to entering government service, Mr. Bartholomew served as a university lecturer in the areas of social sciences and government.

Reginald Bartholomew received his bachelor of arts degree from Dartmouth College in 1958. He then attended graduate school at the University of Chicago, where he received his masters degree in 1960. During the course of his Government service, Mr. Bartholomew has received a number of awards and honors, including the Presidential Distinguished Service Award in 1990. He is also a member of the International Institute for Strategic Studies and the Council on Foreign Relations.

Mr. President, I am confident that Reginald Bartholomew has the experience necessary to serve his new post effectively and I again congratulate him on his recent confirmation.

AN EARTH SUMMIT TRIBUTE

Mr. DURENBERGER. Mr. President, on June 12, 1978, a child was born who has had a great impact on how children and adults around the world understand and work for protection of our environment.

Clinton Hill, of Osseo, MN, was the inspiration for an international campaign known as Kids for Saving Earth. Clinton died of a brain tumor this past year. With the help of his mother Tessa, his father William, and his sister Karina, the club has grown and flourished worldwide with more than 600,000 international members.

This movement, begun by the dream of a young boy and carried out by his family and friends, has brought to light the words from Scripture, "a little child shall lead them."

These bold and ambitious young people, thinking not only of themselves but of their children in the future and the health of us all, have begun Earth-saving projects and programs right in their own backyards. From letters to leaders around the world to recycling projects around the block, Kids for Saving Earth have taken it upon themselves to be responsible for making our planet a better place to live.

As we recognize Clinton Hill's birthday, I want to salute and thank each and every young person who has shown the rest of us just how important it is to do our part every day for the future of the earth.

And today, I would like to pay a tribute to many folks in Minnesota, including the Target Co., who are sponsoring Kids for Saving Earth. Through their generosity, the dream of a worldwide Earth-saving network of kids is a reality.

Mr. President, I ask unanimous consent that a number of letters written by Minnesota children be printed at

this point in the RECORD. These children demonstrate the awareness that this campaign is building in our young people today.

There being no objection, the letters was ordered to be printed in the RECORD, as follows:

HEIDI STEINKE

My name is Heidi Steinke, and I am an eighth grade student, here, at Maple Grove Junior High School, and I am concerned about the environment and especially about acid rain.

I was in Kids for Saving Earth [KSE] for about a year or so, but I don't have much time for it now. I was one of the first, original 20 KSE kids!

Our environment means a lot to me, and I want to see improvements. I want to know that my grandchildren will grow up and live as happily as I have been able to, in a clean environment.

I know that you have some say in what happens here in Minnesota, and I am just interested in what you as a Senator, and Minnesota as a State is doing to clean up and prevent pollution to the environment.

TAYA BRODIN

My name is Taya Brodin. I am 14 years old. I'm in the eighth grade at Maple Grove Junior High. I am involved in many activities outside of school such as traveling, basketball for 7½ years now. Now, softball and swimming. I also enjoy knee boarding.

I have been involved in KSE since the first meeting. I was good friends with Clinton Hill. He started it shortly after he died of leukemia. Since then I have been very active in everything that I can do to help in my community.

JILL MILLER

My name is Jill Miller. I am involved in a lot of athletic activities. I have been in traveling soccer for 8 years and just started traveling basketball at the beginning of eighth grade. I like water skiing, downhill skiing, and figure skating.

I have been involved in KSE for 2 years. What interested me was that I wanted to help clean our world up. I am at the point now that I realize that if we don't start reducing and recycling, our world could end very soon. I hope to get other people involved in the KSE program so we can make this world a better place.

KSE got started by a kid named Clinton Hill. It started in January 1990. Right away it started off by speaking in New York at the Youth Forum. Since then there has been clubs started all over the world. For my school we have gotten speakers to come out to our school and talk about environmental issues. We've had meetings to start new people in KSE.

CHRISTINE TAAFFE

My name is Christine Taaffe, I am an eighth grader at Maple Grove Junior High, and am interested in your views about the environment. The reason I am interested is because we have to start cleaning up our Earth immediately, and we need everyone's help, especially yours because you are so influential in the community.

I have been involved with Kids for Saving Earth, which is a big help in saving the Earth. But mostly I try to be Earth-conscious all the time. I like to spread the word so everyone can do something, and I read many things about our planet.

I feel very honored that you would come to our school to talk about something so vital to our well-being, and I hope I can help you spread the word about this important topic.

WILLIAM JACE BRENDLE

My name is William Jace Brendle. I'm 13 and I go to Maple Grove Junior High. My hobbies are hunting, fishing, skiing, camping, and golfing, and that is why I am interested in the environment, because I am out in it so much. It really gets me when I am out on a hike or out on the water and I look down and I see a candy wrapper and a beer can.

I am not in Kids for Saving Earth. But, I am a Boy Scout. My troop does many things to help and clean up our environment. I am greatly interested in hearing your opinions and ideas on cleaning up our environment. Thank you for your time.

TRIBUTE TO COMDR. THEODORE L. (TED) BUCK

Mr. SPECTER. Mr. President, Theodore L. Buck will soon be completing his year-long tour as commander of the Disabled American Veterans. This position is the climax of a long and distinguished career with the organization. For nearly half a century Ted Buck has been dedicated to advancing the cause of disabled veterans. His tireless efforts are a credit to his organization and to this Nation.

Ted Buck served with honor for the American cause in World War II. He has shown the same commitment as a veteran and has continued on to serve in every line office in Pennsylvania.

He has served in the department for 11 years, on the trust fund for 3 years and as a line officer for 8 years. He has also been the deputy representative at the Aspinwall Veterans' Administration Hospital for 7 years.

During the past year, Ted has visited every Veterans' Administration Hospital in Pennsylvania. Further, he has actively pursued all State and Federal legislation pertaining to veterans. His further action in the service of his cause includes his service on the Americanism Council and his work with the Pennsylvania Veterans Commission.

Ted Buck has been an effective leader and has achieved much in his role as commander. As the leader of the Disabled American Veterans, he instructed his line officers to visit all of the organizations chapters. This action compounded with his other efforts has successfully retained chapters in the organization.

Ted is married and has 6 daughters, 11 grandchildren, and 1 great-granddaughter.

Ted Buck has served the Disabled American Veterans in an outstanding manner. I would like to join the State of Pennsylvania and his many colleagues in extending my recognition of his exemplary efforts before the U.S. Senate.

TRIBUTE TO COMDR. CAROL McNEAL

Mr. SPECTER. Mr. President, Carol McNeal will be completing her year-long tour as the commander of the Pennsylvania Disabled American Veterans. During Carol's years serving disabled veterans, she has held every post in the organization and has shown extraordinary concern for disabled veterans of Pennsylvania and their families. In nearly a decade of service, she has served with honor and distinction, showing great dedication to her cause.

Carol joined the Disabled American Veterans in 1984, when she started auxiliary unit No. 57 to coincide with chapter No. 57, which her husband commanded. She commanded unit No. 57 for 6 years.

She then moved on to the position of treasurer of district No. 6, and held the office for 2 years before becoming the district No. 6 commander for the next 2 years.

Carol McNeal began her work on the statewide level as the junior activities chairman. Since that time she has held every line office in the State of Pennsylvania.

Presently, her positions include: Adjutant of McKeesport unit No. 52, national senior vice commander, Barbara Maldet's personal page, alternate national executive committeewoman for Pennsylvania, the Marine Corps League Auxiliary, and honorary member of the Navy Mother's Club.

In her dedication to the cause, she has visited every Veterans' Administration hospital in Pennsylvania in the past year. This extraordinary undertaking is typical of her exemplary efforts to further the causes of disabled veterans and their families.

Carol McNeal is married to William McNeal, the State deputy inspector general, and has 2 sons and 2 daughters, as well as 11 grandchildren. One of her daughters, Tammy Adams, is the unit commander of district No. 6, and her sister, Donna Sellers, was the commander of district No. 6 and is now Carol's State sergeant at arms. Carol McNeal's tradition of excellent service is being carried on by her family.

The State of Pennsylvania and the Disabled American Veterans are proud of Carol McNeal. At this time, I take great pleasure in extending my recognition of her efforts before the U.S. Senate.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The period for morning business is now closed.

WORKPLACE FAIRNESS ACT

The ACTING PRESIDENT pro tempore. The Senate will resume consider-

ation of S. 55, which the clerk will report.

The bill clerk read as follows:

A bill (S. 55) to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes.

The Senate resumed consideration of the bill.

Pending: Committee amendment in the nature of a substitute, as modified.

The ACTING PRESIDENT pro tempore. The pending question is the committee substitute, as modified, to S. 55. The Chair recognizes the Senator from Ohio.

Mr. METZENBAUM. Mr. President, as the author of this legislation, I have tried my best to explain to my colleagues—especially those who are undecided and those who are opposed—why America, our country, needs this legislation. But I would say to my colleagues, do not take my word for it. Consider the views expressed around the rest of the country. You will find that support for this legislation reaches across the broadest spectrum of American society.

First, and most importantly, the American public overwhelmingly supports a ban on the hiring of permanent replacements. In a Roper Organization poll conducted in April of this year, 72 percent—nearly three-quarters of the 1,009 individuals contacted in a telephone survey—supported a ban on the hiring of permanent replacements. Only 14 percent said workers should not have the right to strike without fear of losing their jobs.

Similar results were obtained in a November 1991 poll of 778 randomly selected registered voters who said they planned to vote in the 1992 Presidential election. The poll, conducted by Fingerhut/Granados Research Co., found that only 12 percent of those surveyed identified themselves as union members, but 73 percent believed that a company should not be allowed to hire permanent replacements for striking workers.

Finally, in two separate polls of 1,000 adult Americans conducted by Penn & Schoen in 1990, respondents supported a ban on the hiring of permanent replacements by a margin of more than 2 to 1. Even wealthy, conservative Republicans expressed roughly 60 percent support for a ban on permanent replacements.

State and local governments, and Government officials, have also recognized the need to address the inequity of the Mackay doctrine. Even though there are serious questions about whether State laws are preempted by the NLRA, many States have felt compelled to act.

Wisconsin and Minnesota have already banned the hiring of permanent replacements. Louisiana, Oklahoma, New Jersey, and Hawaii enacted laws which restrict employers' ability to hire striker replacements.

The Rhode Island House of Representatives passed a bill the week before last with overwhelming bipartisan support to ban permanent replacements. The Delaware Legislature passed a bill last year to ban permanent replacements for the first 6 months of a strike, but Delaware's Republican Governor vetoed the measure.

Other State legislatures are currently considering various bills to address the plight of workers who have been permanently replaced. Such legislation has been introduced in Illinois, Indiana, Maine, Montana, New York, Oregon, Pennsylvania, and West Virginia. In addition, the California State Assembly and Senate passed a resolution endorsing the legislation as reported by the committee.

Local governments also have been getting into the act. For example, in 1990 the city of Boston enacted an ordinance to ban the hiring of permanent replacements. And the bill has been endorsed by dozens of local government officials, including the mayors of New York, Los Angeles, Philadelphia, and Birmingham, and the Cleveland, OH, City Council.

Mr. President, the public opinion polls, as well as the breadth of responses from State and local governments and Government officials, confirm that all Americans will benefit from this legislation. But I would specifically like to note the endorsements of many female and minority leaders and their organizations.

Union membership has long been one of the most effective means for women and minorities to improve their earnings. At the same time, because female, black, and Hispanic workers often hold low-skilled and semiskilled jobs, they are especially vulnerable to being permanently replaced for exercising their legal right to strike.

Let me cite two examples. Hispanic-Americans made up a large percentage of the 1,200 union members at Phelps Dodge that were permanently replaced when they went on strike to protest a 50-percent pay cut—a 50-percent pay cut—in the company's copper smelters and mines in Arizona, New Mexico, and Texas. The company was demanding a 50-percent cut in wages. Could anything be more unbelievable in a civilized society?

Imagine how you would feel if your employer told you your pay would be slashed in half. And these are workers who even before the 50-percent pay cut were barely making ends meet. Cutting their wages in half had a devastating impact on their ability to find affordable housing, to feed their families, to provide for their children. And forget about buying a house, or sending your children to college, or setting something aside for your retirement.

No one can criticize these Hispanic workers for exercising their right to engage in a lawful strike in an effort to protect their wages against such a drastic cut. But for exercising that right, they lost their jobs.

Similarly, after financier Carl Icahn took over TWA and demanded wage cuts and benefit reductions, 6,000 flight attendants—mostly women—were permanently replaced for exercising their right to strike. So much for that great savior of companies, so much for the LBO artist, so much for that man who claims he has been able to do so much for American industry, Mr. Carl Icahn.

So it comes as no surprise that this legislation has been endorsed by so many women leaders and minority leaders, as well as their organizations. Those endorsing the bill include the heads of the National Organization for Women, the NAACP, the Puerto Rican and Mexican Legal Defense and Education Funds, the Older Women's League, the National Council of Negro Women, the National Urban League, 9 to 5 [the National Association of Working Women], the Southern Christian Leadership Conference, and the Women's, Black, and Hispanic Leadership Committees for Workplace Fairness.

Some of the most noted labor law scholars in this country also have recognized the need to ban the hiring of permanent replacements. A number of these leading academics, in a letter to the Members of this body, wrote that the Mackay doctrine is "inconsistent" with "the basic concepts of our labor relations system," and "should be overturned."

Recognition of the problem of permanent replacements even comes from inside the Bush administration. Bernard Delury, head of the Federal Mediation and Conciliation Service, has concluded that the use of permanent replacements "makes the collective bargaining process more difficult." The FMCS is the Federal agency charged with mediating labor-management disputes—who should know better than they?

Mr. Delury has stated that where parties reach agreement on wages and benefits, the issue of permanent replacements is often left on the table. Delury also stated that banning permanent replacements would not lead to a significant increase in strikes.

Let me repeat that. Mr. Delury, head of the FCMS, stated that banning permanent replacements would not lead to a significant increase in strikes.

Support for S. 55 also comes from editorial boards and newspaper columnists around the country. The Pittsburgh Post-Gazette called for a ban on permanent replacements to eliminate the absurd dichotomy in current labor law.

In the Arkansas Gazette, Doug Smith wrote that—

The problem is that the balance of power has become an imbalance of power, because companies more and more are continuing to operate during a strike by permanently replacing striking workers.

And Aaron Bernstein wrote in Business Week that—

An honest look at permanent replacements leads to one view: Take away strikers' jobs, and you take away their right to strike.

Columnist Jon Talton of the New Mexican offered an eloquent explanation as to why we should not strip unions of their principal economic weapon:

Every working American owes such basics as sick pay and the 8-hour day to labor unions. Executives who revel in union-busting are hardly building the framework for employee trust and involvement that is so essential to productivity. * * * Society, too, is hurt. * * * Unions are an indispensable counterweight that helps keep everybody honest in free-market capitalism. If unions are hurting, so is the free market.

The religious community also has endorsed this legislation. For example, Bishop Frank Rodimer of the U.S. Catholic Conference told the Labor and Human Resources Committee that—

The right to strike without fear of reprisal is a fundamental right in a democratic society. The continued weakening of unions is a serious threat to our social fabric. We have to decide whether we will be a country where workers' rights are dependent on the good will of employers, or whether we will be a country where the dignity of work and the rights of workers are protected by the law of the land.

The Religious Committee for Workplace Fairness, comprised of religious leaders from across the country, has stated that—

It is imperative for this Nation to restore the balance between labor and management [and to] ban the permanent replacement of workers involved in a legitimate strike. * * * The question of permanent replacement workers is one that unions should not address alone. It is a question for all people who would keep eternal vigilance on matters of freedom and justice.

Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Utah [Mr. HATCH].

Mr. HATCH, Mr. President, I have listened with a great deal of interest to the distinguished Senator from Ohio. The Senate's consideration, or should I say reconsideration, or should I say reconsideration of reconsideration of, S. 55 has become embarrassing. In fact, it would almost be laughable if the consequences were not so serious. Apparently now there was yet another substitution made in the bill the Senate is now considering, or reconsidering, or whatever it may be. The substitution was deemed to be a "committee modification."

Mr. President, I ask for the yeas and nays on the substitute.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

At the moment there is not a sufficient second.

Mr. HATCH. Then I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Utah [Mr. HATCH] is recognized.

Mr. HATCH. Is the quorum call dispensed with, I ask the Chair?

The ACTING PRESIDENT pro tempore. The Senator is correct. The Senator has the floor.

Mr. HATCH. Mr. President, let me clarify the record for my colleagues who care about the procedures of the Senate. The Labor and Human Resources Committee did not meet Friday. If it did, then they obviously forgot to inform the members of the committee, certainly the minority members of the committee. None of us were informed, so I can say with assurance that the Labor Committee did not meet Friday.

I realize that the minority on the Senate Labor Committee is often considered an inconvenience by the majority. But the last time I checked, all of the names were still on the committee letterhead. I believe we were entitled to be informed about meetings or actions taken in the name of the committee, and I can assure my colleagues that agreeing to this so-called committee modification is not one of them. The so-called committee modification is nothing more than the latest version of S. 55 to be used in their legislative shell game.

I realize that when it comes to labor legislation, most notions of senatorial courtesy get tossed out the window, and I recognize that it obviously becomes political hardball at its zenith; that the proponents will utilize every trick in the book and that the majority on the Labor Committee is in a position to do whatever they want. There is no question about it.

I recognize that they view the committee process to be a bit of a joke, something to use when it is to your advantage and something to toss aside when it gets in your way.

Committees do serve a purpose, Mr. President. They stand for the proposition that sometimes ideas that sound good on their face do not stand up under scrutiny. Committees allow us to make sure that there is a difference between sound legislation and other flaky ideas or theories. Hearings and markups help us to understand a bill, study the bill's ramifications, and of course learn of the potential consequences of any particular bill. That is why we have committees, so we can all look at these things and be a little bit more sure of what is going to happen, inform our colleagues so they know there has been a reasonable consideration of what has been done and of course go from there.

Then when we have done all the committee work, we generally bring it to the floor. And the Labor Committee can bring any liberal bill they want to the floor. There is no question about it. That is why it is astounding to me that they do not use the committee process on these labor bills. As a matter of fact, that is the last thing they care about, because they can do anything they want to on the floor.

So why not do what is right and let the committee process work? Why not have the normal consideration of these blockbuster bills like this one is— like this committee modification is—which would change the whole labor-management relations approach in this country, an approach that has been used for 50-plus years.

No, they did not do that. It is certainly not the case when it comes to labor legislation demanded by the AFL-CIO. Here the opposite of due deliberation is true. Whenever possible, hide the legislation. Constantly keep switching the language so no one knows what they are voting on. It does not make any difference anyway; their people are going to vote for it if organized labor wants it, no matter what it says. But there are some of us who really do think it is important to know what is in these bills, especially these labor bills that might upset the delicate balance between management and labor, something that has worked well in this country for years.

The attitude of the Labor Committee is, make sure that committee reports are invalid by the time we are ready to vote; invoke cloture; and cut off all amendments before anyone has a chance to read the legislation. Keep confusion at a maximum level. That is the way it is done on the Labor and Human Resources Committee. Having served on the Committee on Labor and Human Resources for 16 years, I understand that is how the proponents like to operate when it comes to labor legislation. I only hope that other Members of the body understand that is what has happened on every major labor bill since I have been here.

I hope they appreciate what happens when rules and senatorial courtesy are held in such contempt. This modus operandi is a grave disservice to all Members of this body. I personally hope they are sufficient numbers of Members in this body that have the courage to stand up to this single most powerful special-interest group in Washington and say that this is not the way that we should do business in what is supposed to be the world's greatest deliberative body. If ideas have merit, they should not make a mockery of the legislative process to have them considered. If ideas are truly fair, truly equitable, and truly effective, they will stand up to public scrutiny and open review. If this bill is all that the authors of it claim it to be, then they

should welcome the free, open, and unrestricted debate.

Perhaps the most telling commentary on this new legislation comes not from its authors or critics; it comes from the majority leader and the majority whip. During the filing of amendments last week, they were faced with an amendment on our side which would have made this body, the Senate of the United States of America, subject to the very provisions of this legislation as well as the rest of the National Labor Relations Act. Faced with that possibility that we might possibly apply to ourselves the same laws we apply to everybody else, and, of course, faced with the inherent confusion with the possible consequences of this legislation, they filed an amendment which would have delayed application of the legislation to this Chamber for at least a year while the special task force studies the issue.

Is not that just the way the U.S. Senate should do this? After all, it says that we are more important than the people out there who have to live with the laws that we pass. Why should we have to impose those types of laws on ourselves? Will not that be terrible for the U.S. Senate to have to live according to the laws that everybody has to live with? Would it not be terrible if we had to abide by the same things that others have to? Why, we are different. For some reason we should not have to do this. What we need is at least a year's delay, while everybody else has to comply with these onerous burdens under this bill and under this committee modification, while a special task force study is issued.

That is what we call burying the obligation. We just bury the obligation of the U.S. Senate to be the same as the people we impose these burdens on. After all, they are just the people out there. "We the people" does not quite mean as much when it comes to the U.S. Senate. Why, we the Senators, according to that side and according to those who support this bill and according to that amendment, we the Senators do not have to apply the same things to ourselves that we do to others.

I think that is wrong. I think that is wrong. In other words, the majority leader and the majority whip are ready to offer an amendment to delay imposition of the legislation on themselves and the rest of this body for at least a year so that it can be studied. Just look at the irony of that. So it can be studied, to see if we Members of the U.S. Senate should be treated the same way that the people out there are.

Of course, when it comes to the rest of America, when it comes to the millions of men and women who have risked their savings and their families' security to create businesses and jobs that comprise our economy, when it comes to the vast majority of working men and women who do not belong to unions—when it comes to the rest of America, a few days is more than enough time. It is as much time as it takes to pass it off the floor of the Senate. That is good enough for them. But we will have a year to study for the U.S. Senate. A few days is ample time to write, study, and pass legislation that will affect every workingman and woman in this country for the rest of their lives. That is, a few days after the committee process has been undone, ignoring the whole committee process, not going through the hearings and the consideration of this bill that we do on other bills. After all, this is labor legislation. The AFL-CIO wants this. Therefore, it must be good.

It does not make any difference how it is written or how it affects everybody. We will just pass it here because the votes are always here—and they always are—except for the fact that there is a right of extended educational dialog, which makes us have to think about this for at least a few days.

The attitude of the majority—that a few days is ample time to write, study, and pass legislation that will directly affect every working man and woman in this country for the rest of their lives—is wrong. But when it comes to the U.S. Senate, they say we should wait at least a year so we can study this legislation.

Mr. President, the problem facing us today is whether to revoke cloture on the legislation numbered S. 55—now, we cannot really call it the underlying legislation anymore, because it is different now—whether or not to invoke cloture on the legislation numbered S. 55. The only trouble is that no one knows for sure what is in this legislation on which we are being asked to invoke cloture.

I assumed that this new bill was probably the so-called Packwood compromise, and amendment that first surfaced in the CONGRESSIONAL RECORD on Thursday. I was wrong. So then I presumed it was one of the amendments that was filed on Thursday. I was wrong again. The new bill that we will be voting on in less than 24 hours was available to the public only today. While it is similar to earlier versions in some respects, it is completely different in others. The committee hearing, the committee debate, the committee report are all invalid. Keep in mind, this is after the House of Representatives, the other body, passed this bill. That is what we are considering. The committee hearings, the committee debate, the committee report, all of which were important for understanding of legislation, are now all invalid.

We have no record whatsoever on this new legislation, not any, not any. From what I can tell—and I am assuming that the sponsors have not replaced the legislation yet again, and I do not believe they have a year although I expect anything on labor legislation—the latest Packwood-Metzenbaum solution still overturns the Mackay doctrine. The Mackay Supreme Court decision is a decision that stands for the proposition that, just as employees can go out on strike, employers have a consequent leveler; they can continue operating by replacing, even permanently, the striking workers. That is why strikes have not become in recent years—in fact, since 1938—the devastating destruction of the economy that they will become if this bill passes.

This so-called compromise does not only overturn the Mackay decision. The Packwood solution completely overhauls all of our collective bargaining in the United States. It overturns significant portions of the National Labor Relations Act and, I might add, the Railway Labor Act, laws that I have taken a particular interest in through the years—both of them. It wipes out more than 50 years of Supreme Court precedents and Supreme Court decisions, and it would insert the Federal Government into virtually every wage-setting decision in the United States. This "itty-bitty" amendment that nobody has seen until Friday, this compromise, this committee modification—committee modification. There was no committee action. Mr. President, we are being asked to junk all of these laws and all of these decisions for a proposal that no one in this Chamber really understands, for a proposal that the sponsor admits has never been tried before in the history of the United States.

On Thursday, last Thursday, Senator PACKWOOD described his proposal as "quasi-compelled mediation." What in the world does that mean?

The honest truth is that nobody in this Chamber, including Senator PACKWOOD, who is not here right now, has any idea of how this proposal will work. We have no idea whether it will result in fewer or more strikes. My bet is a lot more.

We have no idea if it will generate labor peace or labor unrest. My bet is, a lot more labor unrest.

We have no idea if it will be inflationary. My bet is that it is going to be inflationary.

I think we can pretty well rely on my bets here, because I never bet unless it is a sure thing. In fact, I do not even bet then, but I would bet here.

We have no idea what impact it will be on small business. I think I do. It is going to be devastating. You can bet the farm on it.

We are being asked to take a gamble. We are being asked to risk the economy on a theory. The answer to this request should be simple. The answer should be no, we are not going to do that.

We are not going to bet this whole country on a theory that even Senator

PACKWOOD cannot explain. The Packwood substitute, which is now described as a committee modification, has been described by some in the media as a last minute "concession" by organized labor limiting its ability to strike. That is wrong.

The latest substitute—and again I am assuming it has not been changed again—actually gives the AFL-CIO a new weapon in addition to the right to strike.

They do not just want the right to strike. They want more than that now. They want the right to send the dispute into arbitration whenever organized labor chooses, and then the right to pick and choose whether it would rather accept the decision of the arbitrator or strike. All choices, of course, are in the sole province of organized labor.

The Packwood solution is most obvious in its inequity. Not only would it destroy the existing balance in Federal labor law, it offers to create a new form of collective bargaining that provides unions with more rights than employers. It offers to upset this delicate balance and dump on the employers.

For example, a union can request arbitration at any time. If the employer refuses the request, it loses the right to permanently replace striking employees for the duration of the labor dispute.

Mr. METZENBAUM. Will my colleague yield for a question?

Mr. HATCH. I would like to finish.

Mr. METZENBAUM. Just for a question.

Does my colleague recognize that there is nothing in the Packwood-Metzenbaum proposal that provides for arbitration? Arbitration is a final binding decision by the arbitrator that the parties must accept. And there is nothing in the Packwood-Metzenbaum proposal that provides for anything other than a recommendation as to what the result should be. Neither party would be bound, which is the case with arbitration. Is the Senator aware of that?

Mr. HATCH. I appreciate the question. I would be glad to use Senator PACKWOOD's terminology: "Quasi-compelled mediation." Technically, it may not be arbitration. Then I will use the term "quasi-compelled mediation." This bill does provide for fact finding recommendations that an employer rejects only at the employer's peril.

Mr. METZENBAUM. Or the union rejects at its peril. And if the union rejects it, then the employer may bring in striker replacements.

Mr. HATCH. I am going to get into that now, I promise the Senator, because the fact of the matter is that the union has a lot of options that the employer does not have if the union rejects. I have just mentioned one. That is, to go back over it again, the union can request arbitration at any time, or "quasi-compelled mediation", if you want to call it that. But it is really arbitration. If the employer refuses, it loses its right to permanently replace striking employees for the duration of the labor dispute. The union can go out on strike, and the employer has no weapon to fight against the strike. It is over.

In other words, an employer either caves in to the strike and loses, or the employer fights the strike and loses, because it has no more weapons to use. One would assume that the proposal to allow the unions to request this quasi-compelled mediation, or arbitration, at any time is a balanced proposal. But no. If management refuses what really is compelled arbitration, then the management loses its only real option, or offsetting right, and that is the right to permanently replace striking employees.

Keep in mind here that management does not want to hire permanent replacements. There is no real need to worry about that, because certainly less than 3 or 4 percent of all of the striking workers have been permanently replaced. It is a very minor percentage. No management wants to go through the process of having all of the animosity and all of the obligation of retraining and so forth. So management probably is not going to permanently replace in most cases, if they have a reasonable set of demands. If they do not, it is their only option.

One would assume that the proposal, to be balanced, would also say that since the unions can request arbitration, and if management refuses to arbitrate or go through quasi-compelled mediation, then management loses its right to permanently hire and replace strikers.

But if the union refuses, why will we not let management request arbitration or this quasi-compelled mediation, call it what you want? And if the union refuses, then the union should lose its right to strike. If you are going to be fair, let us make it work both ways. If we are going to move into compulsory arbitration, which is what this amounts to in the end, practically, or a quasi-compelled mediation, call it what you will, then why not make it to both ways?

If the union requests arbitration and management refuses, management loses its right to permanently hire.

If the management requests arbitration and the union refuses, then the union loses its right to strike.

Hey, I would not like that. I do not think most management people would. But at least it would be fair and provide balance. Where is that balance here?

I thought we were talking about a delicate balance in labor relations that can keep this country from going down the drain. But the proposal contains no such language. It says that only the union can request arbitration, as if there is only one side to this equation.

Is that fair? An employer may not request arbitration? This is workplace fairness? Only the union can? If the union does, and management refuses, it loses its greatest weapon to fight back.

Management cannot request this, but if it could, then the union should lose its right to strike if it refuse. Would that not be fair?

It is not written that way. Only the union has that right and only management loses its only bargaining tool.

Second, if after the factfinding panel issued its recommendations—that is after they set up the factfinding panel, that has 45 days to issue its recommendations—if after that the employer rejects them and the union accepts, the employer's decision is final. It cannot be revoked. And the employer is banned from that point on from hiring Mackay replacement workers when the union goes out on strike.

So the union has all the power. What employer is going to reject the recommendations? They are going to have to take whatever the arbitrator says, or compelled mediation panel, whatever you want to call it.

What happens if both parties reject the recommendations? The answer is that in a glaring one-sided loophole in the Packwood proposal, the union can come back at any time and accept. The union can. That is, of course, what it will always do. Why? Because the recommendations will not apply anyway, since the employer who cannot change its mind, has previously rejected them. What applies now is the ban on permanent replacements contained in S. 55.

Third, there is no limit on the number of times a union can strike under this proposal, no limit whatsoever. Talk about one-sided, talk about a disruption in labor-management relations law, talk about unfairness, talk about stacking the deck, talk about a one-way street, talk about dumping on business.

A union could keep its options open by going out on strike without serving notice. If the employer then stated it was going to hire permanent replacements, or the union suspects it may, the union would simply make an unconditional offer to return to work, shutting off the employer's right to hire replacements. Once all the strikers were back on the job, the union could then file the requisite notice. Everything stacked on the side of the union.

Fourth, there is no provision in this bill covering who is going to pay for all these procedures; who is going to pay for all this disruption in labor-management relations. We have thousands of these situations every year.

Under the Postal Service labor dispute procedures upon which this proposal is allegedly modeled, both sides split the costs. Now, that is not the case here. The bill is silent on this point. So who is going to pay for it?

And it can be a whopping amount of money.

Of course, under the Postal Service labor dispute procedures, there is one other very, very important difference. Postal workers are not allowed to strike. If you are going to model it after the Postal Service, why do you not take away the right to strike here also.

Well, the unions would never agree to that because that is an important element of their rights. And I would uphold their right to do that. But if they have a right to strike, then management has to have a right to permanently replace them. This is hardly ever used, but when it is, it becomes an effective tool on the part of management.

It is a tough tool. It may mean the loss of a business anyway. It is a very, very serious decision to make. Keep in mind, if you are going to use the Postal Service model, typically they are not allowed to strike. Why should these people be allowed to strike once there is a request for arbitration?

I can only assume the authors of the proposal were willing to follow the Postal Service model only so far.

Fifth, most employers would be forced to accept the arbitration board's recommendations, even if they represent only a crude outline of an agreement. Now, why is that? Because under the new rules, set up by this committee modification, the employer will never be able to do any better at the bargaining table. Never.

The union, on the other hand, can appraise the recommendations. If it likes them, the union can accept them or, at the very least, be assured of being able to strike without having to face permanent replacement under the Mackay doctrine.

If the union does not like the recommendations, it can reject them and look to see what the employer will do before having to decide on its next move. If the employer decides to use permanent replacements, it can immediately come back and put its people back into the work force. Once the union has done that, there is nothing to stop it from striking again.

Sixth, a union is always in the position to be able to cut off an employer's right to hire Mackay replacements. Nothing in this committee modification or this proposal provides an employer with the comparable ability to cut off the union's right to strike. Nothing. Nothing.

There is no equality. There is no balance. There is no quid pro quo.

The Packwood-Metzenbaum solution, to the degree that it can be identified, is based on several suspect presumptions. For example, a 1987 National Academy of Arbitrator's Report contained the following conclusion:

> * * *the quality and significance of arbitrators' work is declining. . . . Arbitrators too often base their rulings on principles taken, not from the parties' agreements, problems or needs, but from some treatise on arbitration or from published awards dealing with other parties, other agreements and other problems. Theoretical principles are too often imposed on the parties, without regard to the considerations of practicability or justice. Collective bargaining realities become obscured and play an insufficient role in the reasoning process. Self-restraint is often ignored and awards attempt to decide far more than need be decided.

This observation raises another, serious problem, and that is cost. In the 1970's, many States enacted compulsory arbitration laws that were meant to prevent strikes by public sector unions. Many of these same States found out the hard way the economic consequences of this approach.

For many who have experienced it, binding arbitration may be more aptly called "binding incompetence." Many local officials have stated that they now see less harm in weathering a strike than in submitting to binding arbitration. The Seattle Post Intelligencer reported on March 7, 1976:

> Mayor Wes Uhlman said yesterday he'd rather go through a strike by public employees than wind up with a binding agreement made by an 'irresponsible' arbitrator whose decision could bankrupt the city.

The January 27, 1986 Chicago Tribune quoted Detroit Mayor Coleman Young—certainly no conservative Republican—as blaming Michigan's compulsory arbitration law as responsible for much of the financial difficulties facing his city. Further, the cost to the taxpayers was substantial.

Mayor Young estimated that Detroit's costs because of compulsory arbitration were $50 million-a-year higher 10 years after enactment of the law than they would have been under the old collective bargaining system.

The Tribune article stated that since 1969, according to officials of the Michigan Municipal League, no police contract had been settled in Detroit or any other large city in that State without going to compulsory arbitration. Compulsory arbitration meant higher costs to the taxpayer and inevitably, poorer public services.

The February 7, 1981 National Journal reported:

> The mayor said he will urge the state legislature to repeal Michigan's compulsory arbitration law, a statute, ironically that he co-sponsored in 1969. "We know that compulsory arbitration has been a failure," he said. "Slowly, inexorably, compulsory arbitration destroys sensible fiscal management," and the arbitration awards, he added, "have caused more damage to the public service in Detroit than the strikes they were designed to prevent".

Now, it might come as a surprise to the authors of the Packwood-Metzenbaum proposal, but the authors of our Federal labor statutes had once considered arbitration or compulsory mediation, or quasi-compelled mediation, to use Senator PACKWOOD's words. They rejected it. Keep that in mind. The authors of the Federal labor statutes had once considered arbitration and they flat out rejected it.

During the debate of the National Labor Relations Act on the floor of the Senate in 1935, Senator Wagner specifically refuted the notion of compulsory arbitration:

> One method of approach to the problem of industrial peace would be for the Government to invoke compulsory arbitration, or to dictate the terms of settlement whenever a controversy arises. Where this procedure has been tried in European nations it has met with only questionable success. In any event, it is so alien to our American traditions of individual enterprise that it would provoke extreme resentment and constant discord.
>
> It is clear that in this country peace must be based upon reason rather than force. We have cherished always the ideal of employers and workers meeting together with friendly and open minds in order that they may exchange views and arrive at solutions based not upon compulsion but upon mutual concessions and mutual benefit. This may be termed the method of conference, of give and take, of free cooperation. 79 Cong. Rec. 7573 (1935) reprinted in 2 NLRB, Legislative History of the National Labor Relations Act, 1935, at 2341 (1935).

If this passes, so much for Senator Wagner's ideas. By the way, Senator Wagner is the author of the Wagner Act, one of our hallmarks of Federal labor law, much of which will be modified by this committee modification, I think, to the detriment of both management and labor.

I do not think there is any question about it. I am amazed that to gain an advantage over management, this special interest group would resort to this type of committee modification. I am amazed.

But if they do, why not be fair? If unions have a right to request arbitration, businesses ought to have a right to request arbitration. If they accept it and business does not accept it, then under this bill, business loses the right to permanent replacements.

But if business accepts it and they do not, then they ought to lose the right to strike. Would that not be fair if that is what you want to do, if you want to go to compulsory arbitration? I think I have made a good case against that—or quasi-compelled mediation. You can call it that, if you want to, if Senator METZENBAUM feels I am being too technical here, or he is being too technical; call it quasi-compelled mediation. But it amounts to two words, compulsory arbitration.

In 1947, 1 year after one of the greatest waves of strikes in American labor history, Senator Robert Taft made the following statement in Congress in defense of the Labor Management Relations Act. That is called the Taft-Hartley Act, one of the basic labor laws of our country. He said this:

> [T]he solution of our labor problems must rest on a free economy and on free collective

bargaining. The bill is certainly based upon that proposition. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours and working conditions, when a contract has expired and neither side is bound by a contract. We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right* * *.

But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for two years to come, I do not see how in the end we can escape a collective economy. If we give the Government power to fix wages, I do not see how we can take from the Government the power to fix prices; and if the Government fixes wages and prices, we soon reach the point where all industry is under Government control, and finally there is a complete socialization of our economy.

One government official wrote that the imposition of binding arbitration makes collective bargaining irrelevant. This official wrote:

[Binding arbitration] has taken the responsibility of determining the financial future of the city or town * * * from the local officials and given that responsibility to an unelected arbitrator who may not even live in this community. I do not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule.

Who wrote that statement? Maybe I should read that again, because it is such a good statement.

[Binding arbitration] has taken the responsibility of determining the financial future of the city or town * * * from the local officials and given that responsibility to an unelected arbitrator who may not even live in this community. I do not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule.

Who wrote that statement? Try Michael Dukakis. Try Michael Dukakis, former Governor of the State of Massachusetts and former Democratic candidate for President of the United States of America.

If he, a leading Democrat, recognizes this, and Mayor Coleman Young, a leading Democrat—both of whom I have a great deal of respect for—recognize compulsory arbitration does not work, why in the world can the U.S. Senate not recognize that? Or maybe we can get around it just because it is called quasi-compelled mediation. Give me a break.

We are going to the very system that almost everybody admits leads only to chaos and despair, all because the unions want to get an advantage over management.

Well, another flaw in the Packwood solution is the envisioned role of the Federal Government. I am talking about the Packwood-Metzenbaum bill; this committee modification. Maybe it is the Metzenbaum modification; I do not know. But it was Senator PACKWOOD who raised it on the floor. I am not sure, because we never had a committee hearing on it; we never heard any testimony by either of these Senators. We never talked to them about it; we never knew about it. We had no idea, as a matter of fact, until today. Or I should say last Friday, maybe, after we had all gone from town to our home States.

Another flaw that has to be raised is the envisioned role in this amendment of the Federal Government. To date, since these labor laws were passed in the thirties, and in 1947, the Federal Government has served as a referee—a mere referee—allowing the parties to negotiate between and among themselves. Both sides up to date have had economic weapons. The Federal Government does not involve itself with the substance of the dispute. That is the way it has worked for the last 54 years. Rather, the Federal Government's role is to protect the process of collective bargaining. It does not interfere with it; it protects it under the law.

Under the Packwood-Metzenbaum proposal, this would no longer be the case. In perhaps the ultimate gesture towards big government, the Federal Government would no longer serve as a referee, it would serve as a judge. It would set wage rates and working conditions. That is what the Federal Government would do. That is what they are going to do here. They are going to bring the Federal Government in to interfere with what has been a free and open relationship between management and labor. It is going to set wage rates and working conditions under this proposal.

My goodness gracious. While the rest of the world is running away from this type of law, we are running towards it. I can hardly believe it.

In fact, for the first time perhaps in history, the Packwood-Metzenbaum solution actually includes in the statute a specific term of a labor agreement, specifying under this Packwood-Metzenbaum modification that any agreement cannot be longer than 2 years.

Has Congress now decided that it has problems with contracts of 3 years' duration? Maybe about what they last today, 3 years. Now it is 2 years, if this bill passes. I suppose this is so unions can strike more often, so they can assert their economic leverage more often—especially if management's leverage, the ability to hire permanent replacements, is done away with, which this bill does.

Moreover, under the Packwood-Metzenbaum proposal, the parties would no longer be under a duty or obligation to bargain in good faith, or to bargain to an impasse. In fact, they would no longer bargain with each other, as they have done for the last 54 years. Instead, all the unions would do is petition the Federal Government to appoint a factfinding board. All communications between the parties would then be through the Federal Government. The parties would be insulated from one another.

If I was to pick one item which, alone, would require that we repudiate this bill, it would be that. This alone stands as a complete repudiation of the heart and soul of collective bargaining as we have known it over the last 54 years, in the greatest country in the world, with the greatest labor rights in toto in the world, in a system that has worked for 54 years, with neither side having an advantage over the other. Or should I say "a significant advantage," because there are matters where certainly unions have a greater advantage. Even under current law, if management hires permanent striker replacements and begins its business again, for every job that comes open the union workers have a right to take that job first. That is an advantage that we stack in favor of the unions; rightly so. I do not have any problem with that. It is not equality, but it is a reasonable advantage.

If you stop and think about it, removing the parties from having to deal with each other, as this bill will do, in practicality is really a very, very bad idea. It would repudiate the very heart and soul of the collective bargaining process that has served this Nation so well over the last 54 years.

Finally, for the first time in the history of this country, nonunion employers can be forced to bargain with a union. This is the first time in the history of the country. Under the Packwood-Metzenbaum solution, a union can gain bargaining rights based solely on a bare majority of signed authorization cards, an inherently unreliable indicator of employee sentiment. There would be no need for a secret-ballot election to determine whether the union should represent those employees or not.

Once the union has those signed cards it can claim to represent the employees and file a request for a factfinding panel, forcing the employer to bargain with the union, even though it has not earned that right and even though there has not been a secret-ballot election. This is unprecedented in our labor laws.

See, this is not an itty-bitty modification, this is not an itty-bitty bill, or change, this is not a thing to right a wrong or injustice. This is a major, wholesale revision of the labor laws of our country done at the last minute, the last day, without any committee hearings, without any committee testimony, without any committee consideration, without a committee markup, without even telling the House of Representatives that already passed their version of S. 55. I hate to say it, but that is the height of arrogance.

The Packwood-Metzenbaum solution, this committee modification, is also si-

lent on what would happen if the employer has already demanded a formal representation election to be conducted by the National Labor Relations Board. Nobody knows what is going to happen. This bill does not say. What would happen if the union filed such a request before the election takes place? What would happen? In fact, the Packwood-Metzenbaum solution has so many loopholes, it appears that a union could lose the election and still be permitted to file a request for a factfinding panel under this bill. It is pitiful. This is not the way to write laws. This is pitiful legislation. This is workplace fairness? Give me a break.

Mr. President, this is not the way to write legislation, especially legislation that will have an impact on every working man and woman in the United States.

The Packwood-Metzenbaum solution calls for a complete overhaul of the collective bargaining system of our country. I caution my brothers and sisters on the other side, be careful what you are doing here. What seems to be an advantage for a special interest that is very supportive of you may turn out to be a great disadvantage to the country. It may turn out, in the end, to be a great disadvantage to that special interest and those people you think you are representing by bringing this brand new set of ideas to the floor that have such absolute, long-term economic consequences.

Not only does this bill interfere with the union's right to strike, it gives unions new economic weapons, the power to force employers into arbitration. The power to force employers into arbitration or, if Senator METZENBAUM likes it better, quasi-compelled mediation. It is one and the same, in my book.

The Packwood-Metzenbaum solution is a one-way bill giving unions a variety of new rights and protections but affording employers nothing comparable. Instead, it destroys the current delicate balance in our Federal labor laws and replaces it with a procedure which is unknown except perhaps to the authors of this proposal, and, I submit, they do not know the full consequences either.

Tomorrow when we are asked to invoke cloture on legislation titled S. 55, there is only one way to vote in my book. If you believe that this body should understand what we are doing before we impose a solution on the whole country and uproot labor-management relations and labor laws of the whole country, if you believe the rules and procedures of the Senate ought to mean something, if you believe we ought not overturn 50 years of Federal statutes, Supreme Court, and other judicial decisions and legal precedent on a whim, if you believe that now is not the time to be gambling with our economy, if you believe we do not have to destroy the very collective bargaining system that we all believe in in order to help unions, then you should join us and help us and vote against cloture.

Mr. President, I am not kidding. This committee modification has sweeping implications, all kinds of loopholes. It is not fair, it upsets this delicate balance, hurts the economy of this country, drives the parties apart instead of bringing them together to negotiate their differences. And, ultimately, it is going to mean chaos in this country, all because of a last-minute scheme that our committees never considered, never thought about before, never held hearings on, never had a markup on, never discussed with each other. I think that is not the way to do legislation. It is not in the best interest of our country to support this, and I hope our colleagues will vote against cloture because, if we do not, and this thing passes, we are all going to be sorry as the country faces problems that it never conceived possible before, as we move to a position of much less preeminence in the world than we are today.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. HATCH. I have not yielded the floor yet, Mr. President.

Mr. METZENBAUM. I am sorry.

Mr. HATCH. I do have a few questions I would like to ask my esteemed colleague from Ohio on this amendment that I want to get some answers to.

When Senator PACKWOOD appeared last Thursday and he described this proposal or, in essence, this proposal, he began as follows: "You have reached an impasse"—he is talking about the system—"you have reached an impasse. You cannot reach a contract, so the union says, 'We would like to have a mediation panel.' They have to say this 7 days before they go on strike."

There are several things I do not understand about this description in the proposal itself.

First, is it not correct that the committee modification, substitute, whatever you want to call it, itself says that the request be made not "7 days" but "at least 7 days" before a strike?

Mr. METZENBAUM. I think that is correct. I think that is the language.

Mr. HATCH. Is it not correct then to be able to assume that might mean 7 days, 7 weeks, or 7 months?

Mr. METZENBAUM. I think "at least 7 days" certainly means that.

Mr. HATCH. It could be 7 days or 7 months.

Mr. METZENBAUM. It could be at least 7 days; that is correct. I think we both understand the English language.

Mr. HATCH. Or it could be much more.

Mr. METZENBAUM. I do not think it would be inappropriate. I think the union early on would be trying to avoid the need to have a strike.

Mr. HATCH. I have to say I do not have any problem stopping strikes before they happen either. My question goes to how one-sided the proposal is.

Mr. METZENBAUM. I do not see anything one-sided about that at all because employers are not threatening to go on strike, so I do not see how you can have it two-sided. Are you suggesting in some way that the employer indicate that it is thinking of going on strike?

Mr. HATCH. No. I am suggesting the employer ought to have a right to request a factfinding panel.

Mr. METZENBAUM. Would that make the Senator from Utah find this agreeable?

Mr. HATCH. No, it would not, but it would be more fair. Let me say this, my question goes to how one-sided the proposal is and how easily it can be manipulated by the union side to avoid losing anything in the process.

Mr. METZENBAUM. Let me say to my colleague from Utah, I am willing to stand here to answer his questions, but I am not willing to stand here and answer his questions with all of the prefatory invective that he suggested. If you just ask me the questions, I will answer them.

Mr. HATCH. I do not think it is invective to describe how I feel. I want you to describe how you feel.

We have established that a union can seek factfinding at any time prior to 7 days before it plans to strike. I cannot find anything in this proposal that would require that a union's request for this outside party to write the contract be preceded by a bargaining impasse by the parties. I cannot even find where it has a precondition that the parties have engaged in any collective bargaining at all.

If you disagree with that statement, would you mind directing me to the precise language in the committee modification that would rebut what I just said or that imposes any such preconditions?

Mr. METZENBAUM. I think what you are suggesting is that somehow the union would rush in and think this is such a great idea to have this mediation. Let us face it, unions representing workers would prefer to negotiate with the employer to come to an agreement. By no stretch of the imagination could the National Association of Manufacturers, or the U.S. Chamber of Commerce, or the Business Roundtable, or anybody else think that any union would suggest that some outsiders come in to mediate a labor dispute before the union had a chance to sit down with the employer to negotiate.

So I think if you want to be unrealistic, or to fictionalize some concept that just is not realistic, I think you can. I came out of a law practice and

out of an earlier career where I understand the feelings of working people, and I was also an employer.

Mr. HATCH. I did, too.

Mr. METZENBAUM. I had many people working for me, over 4,500. I simply understood that employers and workers want to try to work out their differences. Neither side is anxious to have a strike.

Mr. HATCH. My question is not that. My question is, Is it in the bill as a precondition?

Mr. METZENBAUM. I do not think there is any precondition in the bill. The Senator from Utah obviously reads English very well. He knows it is not in the bill.

Mr. HATCH. Let me say this. It is not in the bill.

Mr. METZENBAUM. Pardon.?

Mr. HATCH. It is not in the bill, any precondition?

Mr. METZENBAUM. There is no reason for it to be in the bill.

Mr. HATCH. I think the Senator assumes quite a bit because, first, the request for factfinding, as we have already covered it, can be lodged long before any threat to strike or any strike takes place.

Second, I am not aware that the law protects unions from striking only once an impasse is reached.

Third, while there is a statutory requirement elsewhere in the National Labor Relations Act that both sides bargain in good faith, it is not at all clear that the proposal, as written here, kicks in only after any unfair labor practice issues have been decided.

Mr. METZENBAUM. We are not suggesting there has to be an unfair labor practice. That is not the implication of this legislation. There does not have to be an unfair labor practice at all. It just may be that the union feels an employer is being unfair. That is not an unfair labor practice.

Mr. HATCH. This is a good dialog, and I think it is important for us to go over this a little bit so I understand it a little better. Senator PACKWOOD in his statement last Thursday indicated surprise that the unions were agreeable to the suggestion now——

Mr. METZENBAUM. That is right, he did, because this is a major move——

Mr. HATCH. It is a major change.

Mr. METZENBAUM. For the unions to be willing to submit disputes to mediation and factfinding. That is a major move away from a traditional position, and a great concession. I am surprised that employers are not here jumping on the bandwagon and saying this is a great way to avoid many strikes in this country.

Mr. HATCH. I am not surprised at that. I am surprised that they would move toward this in light of the comments of Mayor Young and others that I have quoted here, including former Governor Dukakis. But Senator PACKWOOD indicated surprise that the unions were agreeable to the suggestion because, he said, "of what an anathema it is to organized labor to in any way consider any limitation or any legal impediment on their right to strike, and in this case, they are risking a lot and putting the power of a strike in a much less powerful position than it otherwise would because they are going to be an opprobrium of the law against them if they turn down this panel's recommendation."

I have to tell the Senator I am really puzzled by his statement there because, first, when you say that the unions are risking a lot because they are putting the power of a strike in a much less powerful position than it would otherwise be, I assume the Senator means than it would otherwise be in S. 55, if it were to be passed in its original form. And I assume this because I cannot see how the unions have, in this proposal, given up any power that they have under current law. Am I correct on that?

Mr. METZENBAUM. They certainly have given something up.

Mr. HATCH. What have they given up?

Mr. METZENBAUM. They have indicated a willingness to have a third party come in and indicate publicly what the situation is. And once that has been done, if the union does not accept it and the employer does, then the employer is in a position to bring in striker replacements. And that would be a legal right. Never before has there been any such proposal made by the unions of this country.

Mr. HATCH. That is all current law.

Mr. METZENBAUM. Certainly, employers can do that, and that is the reason we are here. Let me point out to my colleague from Utah, the proposal that has been made has been approved by a majority of the Members of this Senate, and all we are doing today is arguing as to whether or not we are going to be able to cut off debate. But 55 out of 100 Members have indicated that they think this is a proper road to go, and what we are talking about now, the real issue before this body is whether we cut off debate.

Now, the Senator from Ohio has used the procedure of extended debate on more than one occasion, but I believe this is the kind of situation where the bill really is good for the country. The bill moves the country forward as far as labor peace is concerned, because when you have a strike it contributes nothing to the economy. It means a cessation of work. It means a cessation of production.

Fifty-five Members of this body said, let us vote on this issue. We think that the proposal is a fair one, to provide for a factfinding body to come in, a balanced body.

I was quite aghast when I heard my colleague and friend from Utah say last week that somehow there is some bias in favor of the union in having somebody from the Federal Mediation and Conciliation Service appoint the third party, one from the union and one from management and one appointed by the FMCS.

Mr. HATCH. I want to point out to the——

Mr. METZENBAUM. I want to say that nobody, none of those people who oppose this bill, the groups I mentioned before, the Chamber of Commerce, the NAM and the Business Roundtable, none of them would come forward and say that they believed that those appointments were biased, criticizing the integrity of an arm of this Government that is well respected both by management and labor.

Mr. HATCH. Of course, that is not what I said, nor does the bill say that.

By the way, the 55 members who voted last week had no idea what in the world was going to be in this committee modification, which is different from the Packwood modification.

Mr. METZENBAUM. The difference is minutia. One portion of it covers a detail that the Senator seemed concerned about.

Mr. HATCH. Even so, nobody knows to this day what the implications are of the modification.

Mr. METZENBAUM. Please let me finish. The differences we are talking about—and the Senator from Utah would suggest there were major differences—the differences we are talking about have to do with the point that the Senator raised, which was that somehow there was some possibility the original bill and the Packwood bill had different parameters as to how far they would go. And though we did not feel it was necessary to provide any clarification, we made that clarification in order to accommodate my colleague from Utah, and then we provided for certain adjustments with respect to the Railway Labor Act so there could not be any misunderstanding. But other than that, there were no changes made.

Mr. HATCH. When Senator PACKWOOD described his proposal last Thursday, he said that the unions would appoint one of the mediators, management would appoint the other, and the two would appoint the third. Now, under the new modification it appears that the Federal Mediation Service will appoint the third. I have no problem with that. But under this proposal, as modified, unions retain all the rights they have ever had——

Mr. METZENBAUM. If the two still cannot agree. If the two agree, that is fine.

Mr. HATCH. I understand.

Mr. METZENBAUM. They make the appointment. If the two cannot agree on the third, then the appointment is made.

Mr. HATCH. I understand. However, under this proposal, the unions retain

all the rights they have ever had and they get a lot more. The more is that, first of all, the union has the right to request the factfinding board. Management does not. That is a right that they have that management does not have.

As I understand it, if an employer does not accept a contract that some outside party has written for it, meaning the factfinding board, and employer loses its longstanding right to defend itself against a strike by hiring Mackay replacements to continue operating. I think the Senator would agree with that.

Mr. METZENBAUM. I am sorry, I did not hear the Senator.

Mr. HATCH. If the employer, first of all, accepts that the unions request to the factfinding board, then the factfinding board comes up with a contract or the agreement.

Mr. METZENBAUM. No, no, no. No, no. The panel comes up with a proposal to the parties as to what the solution should be.

Mr. HATCH. Right.

Mr. METZENBAUM. At that point neither party is compelled to accept.

Mr. HATCH. The Senator is way ahead of me. The union requests the factfinding board. Then, within 45 days, the factfinding board comes up with a proposal.

Mr. METZENBAUM. Right.

Mr. HATCH. For the union and management to accept or reject. Management does not have the same commensurate right to request the factfinding board, or does it?

Mr. METZENBAUM. The proposal is addressed to situations in which a union seeks to gain a right not afforded by current law: the right to strike without exposing the strikers to the threat of permanent replacement.

Mr. HATCH. Where is it, in S. 55?

Mr. METZENBAUM. To secure that right—let me finish—the proposal imposes a set of obligations upon the union, the first of which is an obligation to initiate conciliation procedures. If the union fails to do so, the union forfeits the rights that would be provided by S. 55.

No like provision is made for employers to initiate conciliation because no like consequences are imposed. Unless the union meets its obligations, the employer automatically retains all of his or her existing rights under current law, including the right to permanently replace strikers—and this is true regardless of his or her actions or inactions. Of course, an employer is always free, as is true today, to propose to the union a voluntary method of peaceful resolution of a dispute, including a factfinding process if the employer sees such a proposal as being in his interests. And the union is free to accept the proposal if the union sees it to be in its interest.

Mr. HATCH. The Senator makes my point, and that is the union has the right to request a factfinding board, but management does not. Once they request that board, then the board has 45 days to come up with a proposal.

Mr. METZENBAUM. If management agrees to establish the board, that is correct.

Mr. HATCH. Yes, but if management does not agree to the——

Mr. METZENBAUM. If management does not agree to submit to the factfinding board, it cannot use permanent striker replacements.

Mr. HATCH. Management loses its right under current law. What have the unions lost at that point?

Mr. METZENBAUM. They have not lost anything.

Mr. HATCH. That is right. Management loses a most cherished right.

Mr. METZENBAUM. If the union does not accept the factfinding board's recommendation.

Mr. HATCH. You are getting way ahead of me. The union has a right to request the factfinding board; management does not. Right?

Mr. METZENBAUM. Right.

Mr. HATCH. Right there is an inequity.

Mr. METZENBAUM. When the union requests it, and the employer agrees, the union loses its right to strike.

Mr. HATCH. Let us do it step by step. The union has a right to request the factfinding board; management does not. If the union requests it, the factfinding board has 45 days in which to come up with a proposal agreement. At that point, management has not had really any rights up to that point other than to reject the factfinding board to begin with. But, if it rejects it, it loses its 54-year-old right to hire permanent replacements. Is that right?

Mr. METZENBAUM. To hire permanent replacements if the union goes on strike.

Mr. HATCH. Sure. If the union goes on strike.

Let us assume now that management does not reject even the appointment of a board. There are 45 days in which to come up with this proposal. The board comes up with this proposal. If management and labor cannot agree, then the Federal Mediation Service has to appoint a third person on the board. Somehow or other they get the three-person board, and it comes up with the agreement; then let us go to the union first. If the union rejects the agreement, what do they lose?

Mr. METZENBAUM. If the union rejects the agreement, then the employer has the right to hire permanent striker replacements.

Mr. HATCH. They do not lose anything because management has that right now.

Mr. METZENBAUM. They also lose the support of public opinion.

Mr. HATCH. No, no.

Mr. METZENBAUM. Yes, yes. Do not tell me no, no.

Mr. HATCH. That may be right, but that is current law.

Mr. METZENBAUM. Sure. But the fact is, there is a difference.

Mr. HATCH. No.

Mr. METZENBAUM. Once you have this procedure in place and the union refuses to accept it, then you do have the force of public opinion. Right now you do not always have the public on your side.

Mr. HATCH. I agree. But the fact of the matter is the union has not lost any right to strike. If the union rejects, management may not lose its right to hire permanent replacement. So it is current law.

Mr. METZENBAUM. That is correct.

Mr. HATCH. Let us say management rejects the agreement because it is something they cannot live with. Let us say it is a pattern of agreement made with some other company that they cannot live with. Management says we cannot live with it. We have to reject it. At that point what does the union lose?

Mr. METZENBAUM. At that point what does the union lose? Why should the union lose anything when the management rejects the panel's proposal? What kind of absurdity is that?

Mr. HATCH. Wait. Let me rephrase the question.

Mr. METZENBAUM. The management refused it, what does the union lose? In your opinion, the union ought to lose every time it moves.

Mr. HATCH. No. That is not my opinion. I happen to have been raised in the labor movement.

Mr. METZENBAUM. Maybe so, but you have grown up since then, and in your maturity you have not been on the side of labor in a long time.

Mr. HATCH. Yes, I have.

Mr. BYRD. Mr. President, I ask that the Senator address the other Senator through the Chair and in the third person.

Mr. HATCH. I will address the distinguished Senator from Ohio through the Chair. I asked the Senator.

I am not trying to figure out who loses. What I really want to figure out is what the equities are. The unions do not lose anything.

What does management lose if management rejects the offer? Management loses its right to hire permanent replacements. First of all, the union is the only one that can request the factfinding board to be set up; management cannot. When they come up with this proposal, if the unions reject it, current law applies, management can then hire permanent replacements. If management rejects it, current law is changed. Management loses the right to hire permanent replacements. I think you have to say that the unions have not lost anything up to now. I am not suggesting they should, but management definitely has lost a 54-year-old right.

Let me go a little bit further. If both sides say no to the agreement, or to the recommendations of the factfinding panel, is there anything that would stop the union from coming back the next day and accepting the report?

Let me make it a little more clear. If both of them say no to the factfinding board's recommendations or suggestions, both of them say no, then I presume the unions have a right to strike at that point. If both of them say no, I suggest the unions have a right to strike which is current law, and management has a right to permanently rehire which is current law under this committee modification.

Is that right?

Mr. METZENBAUM. If both reject the recommendations.

Mr. HATCH. If both reject.

Mr. METZENBAUM. Mr. President, as I understand the question, if both say no, the union has a right at a later point to say yes, and management has a right to say yes. They can change their mind.

Mr. HATCH. That is not my point.

Let us go step by step. If both reject, then current law continues to apply. In other words, the unions have a right to strike, management has a right to hire permanent replacements, but is there anything that stops the unions from coming back the next day and accepting the report of the board or the recommendations of the board?

Mr. METZENBAUM. Is there anything——

Mr. HATCH. Let us say they both reject it, the union has a right to strike, management has a right to hire permanent replacements. OK. Let us say 3 days expired up to that—or a week or 2 weeks, I do not care, one day.

Does the union have a right to come back and accept the recommendations of the board, and change its mind?

Mr. METZENBAUM. Mr. President, the response is that the union has a right to accept at a later date but if in the interim the employer has hired permanent replacements, those replacements remain in their jobs.

Mr. HATCH. I understand. But let us do it step by step.

Mr. METZENBAUM. That is quite a loss.

Mr. HATCH. If they both reject, current law applies, unions can strike, management can hire permanent replacements. Let us say it is a week later. Certainly, they may not be hiring permanent replacements. But let us say management indicates they are going to hire permanent replacements and the union realizes it, can they immediately accept the factfinding board's recommendation?

Mr. METZENBAUM. The answer is yes.

Mr. HATCH. Once they do and management is still in the position of rejecting it, then management loses the right to hire permanent replacements, right?

Mr. METZENBAUM. The answer is yes.

Mr. HATCH. That is right. The employer itself cannot come back.

Mr. METZENBAUM. Why do you not take the corollary: if the employer decides to accept at a later point, and the union refuses, then the employer has the right to bring in permanent replacements if the union decides to strike.

Mr. HATCH. The point I am making is if both of them reject, if the union goes on strike, management has a right to hire permanent replacements. But if management then indicates it is going to hire permanent replacements, the union is going to accept—to come back and accept—because that cuts out management's right to hire permanent replacements.

Mr. METZENBAUM. The fact is that such permanent replacements, if brought in by that time, will indeed be permanent.

Mr. HATCH. Not in a week's time.

Mr. METZENBAUM. I want to say to my colleague from Utah that I went up and conducted a hearing in New York in connection with the New York Daily News strike, and before the strike had even occurred the striker replacements were there on the premises ready to go to work and the company brought them in that very same night.

So when you say they will not bring them in during a week's time, it is contrary to fact. Because what employers are doing now is hiring these very special outfits that bring in not only the legal team but the group of striker replacements for you. In the Daily News situation, they brought them in from out of State. So the whole practice of bringing in striker replacements is a very artful, new form used by some zealous employers anxious to break their unions.

Mr. HATCH. Under current law that may be the case that there are a small number of employers who might use this right.

But look, the true answer here is, under this proposal—the committee modification—unions get a total ban on Mackay replacements if management rejects the recommendations, just like under S. 55, the underlying bill, unless one of two things happens: First, the union refuses to use the factfinding procedure completely—but note that the proposal allows them to keep changing their minds any time they want. So management would never be able to hire permanent replacements. Or, second, if the union rejects the board's recommendations, when an employer accepts them.

If either of these things happen, what does the union lose? Nothing. Not any rights of protection it has under current law. It just does not get S. 55 in its original form. That is all. It can immediately cut off management hiring permanent replacements the minute it accepts the board's recommendations. That is my point.

Let me ask the Senator another question. It has been suggested by some that your proposal is modeled on the postal Reorganization Act, sometimes known as the PRA. Now, as we have all figured out by now, it is dissimilar to the Postal Reorganization Act, in the most fundamental of ways, because unions in the postal service do not have the right to strike. Unlike the Packwood-Metzenbaum proposal, the Postal service has true interest arbitration with both parties—not just management giving up its economic weapons.

As to the proposal you are arguing for here today, I notice that the committee modification references two sections of the Postal Reorganization Act. That would be in your bill at page 4, line 21 and page 5, line 1, if you care to look at it.

Mr. METZENBAUM. If the Senator will wait a minute.

Mr. HATCH. I am not trying to put you on the spot. I want to understand this. It is very complex, and anybody that looks at it knows that this is—we can go over some of this tomorrow, if the Senator prefers. Will we have time on the bill tomorrow?

Mr. METZENBAUM. I am not sure about that.

Mr. HATCH. My understanding was that today is the only day. That is why I need to go over this. Let me go over this question, and we will see where we go from here. I notice that the distinguished Senator from West Virginia is here, and he would like to speak. I do not particularly want to hold him up from speaking.

Let me just ask this one last question. Since those two sections describe two different panels and two different selection procedures, can you tell me what has been agreed to in this modification. For instance, staying with the Postal Service a bit longer, it appears to me you may have omitted one citation, and that is the PRA section 1207(c)(3). Do you have that?

Mr. METZENBAUM. I see a reference to 1207(b).

Mr. HATCH. This deals with how all of this is paid for. Your proposal was silent on who pays. Is it that the taxpayers pay for this type of a collective bargaining approach? Do the parties share the cost, or does one party have to pay for everything? I wonder who that party is, who is going to have to pay for all of this. If the parties share the costs, then do you not think this could be a substantial burden on, say, a financially strapped small business?

Mr. METZENBAUM. I am not in a position to answer that question. But if it would make this measure agreeable to the Senator from Utah, the Senator from Ohio would have no difficulty in accepting a provision providing that the expenses would be divided.

Mr. HATCH. It certainly would be good to clarify that. Either the Federal Government pay, or they pay coequally.

Mr. METZENBAUM. From experience in the area of labor arbitration and mediation—and this is not arbitration—in most cases where parties are in dispute and a third party comes in, the parties share the cost.

Mr. HATCH. One of my problems, I tell the distinguished Senator from Ohio, is that under this proposal, the union loses nothing, there is no risk. Our system is built on a system of risks and benefits. The unions can use their offensive weapon of striking, and it is a powerful offensive weapon. Nobody wants to undergo a strike. Most unions do not want to strike, either. It is not good for anybody. But it is a powerful weapon, if they have to use it. I will stand up for their right to do that.

On the other hand, if the businessman says, "I cannot take a strike, and I am going to use permanent replacements, if you do strike," right now there is a standoff there, where the union has to weigh this and say, "well, if we strike, we might lose our jobs," and management has to weigh, "If they strike, we might lose our business. If we hire permanent employees, we might have all kinds of animosity, and we might face a lot of things to cause us difficulty," In an industrial State like Ohio or New York, a continual picket line in front of a business that hired permanent replacements generally means a lot less business for that business.

So there are two sides to it, and both of them have pluses and minuses in the current relationship. Both have effective offensive weapons. Neither is bereft. Under this proposal, the union does not lose anything whether it uses this process or whether it does not use this process at all. The employer, on the other hand, loses his right to Mackay replacements if he rejects this process. That is a tremendous loss to one side of the equation.

Management, furthermore, cannot change its mind. Under this bill, once management makes the decision to reject the recommendations of the fact-finding board, management is done; it loses its right to hire permanent replacements. But the union can change its mind any time it wants and come right back in if it is striking once management indicates it is going to go ahead with permanent replacements. The union then can change its mind, come back in and force management not to do so.

There are a lot of things like this that really bother me about this particular bill. I will have other questions tomorrow.

This committee modification is not an equal modification. It is not fair to the one side of the collective bargaining equation. I have to tell you, those who think this is a good idea, those who vote for cloture, are going to have to live with this, if it passes and becomes law. I have to tell you that you are going to have problems the rest of your political careers, because every day that this one-sided approach receives its one-sided end, everybody in the business world is going to go berserk.

That is what is wrong with legislating at the last minute like this without committee hearings or consideration by anybody, and with having a whole new bill that completely disrupts the total collective bargaining process of this country and many Supreme Court decisions in labor law. So this is important stuff. I feel deeply about it.

I am not trying to put anybody on the spot or to blame the unions for wanting what I consider to be an unfair advantage over management. I could not blame management if they wanted an unfair advantage over unions. They are never going to get that as long as I am here. I do not think unions ought to be getting unfair advantage over management either. That is why I am discussing this matter, trying to point out the defects of this bill. I think we have pointed them out pretty clearly.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise to respond to my colleague from Utah, who talks about the fact that the union does not lose anything under the Packwood-Metzenbaum proposal.

Let me make it clear. Unions do not like to go on strike. Unions do not find that to be a gratifying experience. It means that the salaries or the wages of the workers are no longer being paid, and that every day that they are on strike, it is costing them. It is a problem, but they go on strike because they have a fundamental difference with management.

My colleague from Utah would make it appear that when the union goes on strike and the employer brings in striker replacements, that is the way it should be. But that is not the way it should be, and that is not the way it was from 1938 to 1980. And this country prospered. This country's corporations did well. Businesses made money.

You look at the economic growth of this country between 1938 and 1980, and it was wonderful. In the last few years, employers have been using permanent striker replacements and employers have not been doing that wonderfully, because the economy has been going down under the leadership of this President.

So it was under Reagan and Bush that you brought in this new concept. It had been there from 1938 to 1980, but nobody used it. And then along came Ronald Reagan. And Ronald Reagan came in, and almost the first thing he did was to break the strike of the air traffic controllers.

Now, it was all right for him to be opposed to the strike. But he would not let those workers—many of whom had been working for the Government and doing good work, and protecting the lives of all of us for so many years as air traffic controllers—he would not let them come back to work. And so the employers of this country said: If the President and the Vice President can follow this kind of a policy, then we may as well do it, too.

And so they started this new concept of bringing in permanent striker replacements. It did not contribute to the economy. You cannot show me, hardly, an example of a company that is doing better since they tried to bring in striker replacements. It did not contribute to the economy. You cannot show men, hardly, an example of a company that is doing better since they tried to bring in striker replacements. Eastern Airlines, they are not doing any better; they are dead. Phelps Dodge, I am not exactly sure how they are doing. The New York Daily News certainly is not doing better. They tried to bring in permanent striker replacements.

Across the country you will find some instances where employers may have busted their unions and brought in permanent striker replacements. But I bet dollars to doughnuts that their profit-and-loss sheets are not that good, because the new employees do not have the same love and dedication to the company that employers who worked there 10 and 20 and 30 years had.

So, what we are trying to do here today is to change the current law, because, there is no secret about it, the current law is unfair to working people who are organized into labor unions. We are changing it because the current law is bad. Yet, the Senator from Utah would totally ignore the fact that it is bad. What he is saying is that there is no imbalance now. But there is an imbalance now, and we are trying to correct it.

So, what has occurred? The Labor Committee, of which he is a member, sent to this floor the bill that is known as S. 55, and then it appeared that there were some who felt some changes should be made to provide some balance. So Senator PACKWOOD proposed the balance, and I agreed, as the manager of the bill, to accept the Packwood proposal.

Now, the Senator from Utah would totally mislead this body by consistently, not once, not twice, but 10 and 15 and 20 times, talking about the fact that this is compulsory arbitration.

I know what the difference between arbitration and mediation is, and so does the Senator from Utah. But somebody is putting words in his mouth. Be-

cause he knows that arbitration is where two people sit down and—whether they are in business and it is a commercial transaction or whether it is a labor union and management—the two agree to submit the matter to a third party for decision; that is arbitration. But there is nothing in this proposal that provides for a final, definitive resolution of the differences. All we have is a recommendation by this mediation panel composed of three people, one appointed by management, one appointed by labor, and if the two of them agree upon the third, fine, then there is a three-person panel, and, if they cannot agree, then the third is appointed by the Federal Mediation and Conciliation Service.

He talks about this, and the Senator from Oregon had called it "quasi-compelled mediation." I have tremendous respect for my colleague from Oregon, but I have to disagree with even that definition. It is not that at all. It is mediation that the parties have a right to go to if they want to, and they do not have to. And if the employer does not go, then the employer loses its right to bring in permanent striker replacements. And if the union does not agree to go to mediation, then the union loses its ability to keep the employer from bring in permanent striker replacements.

I have heard my colleague from Utah turn black into white and white into black. He is a very solicitous speaker. One would conclude from his remarks that there is an element of balance. But there is no element of balance. There is no arbitration. You cannot call something arbitration that is mediation. Arbitration is final and determinative; mediation is a recommendation.

My colleague has great creativity, he has great imaginativeness, and, in this instance, he has great ability to rewrite the English language. But you cannot make black white and white black in this situation.

He talks about sort of an Alice in Wonderland kind of approach. But no matter how many times he chants "compulsory arbitration" or even "quasi-compelled mediation" you cannot obscure the real facts. And the real facts are what has been stated over and over again. The employees have the right to ask for the mediation. The employer has the right to say no. If they both agree, it goes to mediation. Each side appoints one person to the mediation panel and those two agree upon the third. If they cannot agree, there is a Federal Mediation and Conciliation Service [FMCS] that appoints the third.

But even then, nobody has to accept the recommendations of the mediation panel. If the employer does not accept them, then the employer loses the right to bring in permanent striker replacements. If the union does not agree to the recommendations, then the union loses the ability to strike without permanent striker replacements being brought in.

Is that a change in the law? Yes, it is a change in the law. It is a change brought about because of Ronald Reagan's actions, and George Bush's conformity with those actions. And too many American employers were the leveraged buyout artists, the fast buck artists who took over companies and then came in and just wanted to know "how can we make more?" Not necessarily more for the stockholders but, in too many instances, more to pay off the debts they incurred in order to take over the company.

Sure, each side has some risks if they resort to factfinding. But neither side has to participate in that factfinding, and neither side has to accept a single recommendation.

No matter how many times he talks about it being "quasi-compelled mediation," which, it is fair to say, was the term used by my colleague from Oregon, the many times he used the phrase "compulsory arbitration," which is the language of the Senator from Utah, it just is not that. Under this proposal the decision to utilize the dispute reconciliation machinery is voluntary to the parties, and no factfinding procedures would occur unless both parties agree to use the proposed machinery.

Moreover, once the factfinding process is completed, the factfinding board's recommendations will only have effect if they are accepted by both sides. This is not compulsory arbitration. This is only a mechanism to facilitate and encourage agreement by providing for a fair dispute resolution, and by providing incentives for the parties to use that mechanism.

Let me talk about where we are on this matter. A majority of this body wants to pass S. 55, but a minority of this body wants to keep talking about it, and talking and talking and talking. So, under our rules—and I have used those same rules before myself—we need to get 60 Senators—not 51 Members of this body—to move forward with this legislation.

I challenge my colleague from Utah. If his position is so right, then call off the filibuster, eliminate the need for cloture, let us go to a vote, up or down, on the proposal, and he will find that a majority of this body wants to enact this proposal because they think it is fair.

But the unfairness of what is occurring at the moment is that a minority of this body is using the rules of the Senate. I said before, I have used those same rules myself but I have tried to use them in those instances in which I felt it was a pro bono publico matter. I do not find anything pro bono publico in this resort to a filibuster in connection with this matter because, if S. 55 passes, there will be a lesser number of strikes in this country. There will be more negotiations. There will be more mediation. There will be a greater element of fairness between management and labor, and we will go back to where we were before 1980.

Yes, I think this economy cannot afford to have strikes at the present time. I think this economy is under assault. I think this economy is having difficulties. Some would try to say, yes, but what about what the other countries are doing throughout the world, how they are competing with us? I will tell you how they are competing. They are competing by permitting employees to go on strike without the right of employers to bring in permanent strikebreakers. What we are talking about here is use of employers to bring in permanent strikebreakers, a right that employers do not have in most of the major nations of this world that compete with us. They do not. They have never even heard of this subject in Japan, for example, and they may not use permanent replacements in France and Germany and Italy and other parts of the world. In these and many other countries, there are limitations with respect to the right to bring in permanent strikebreakers, or a prohibition entirely.

I say to my colleague from Utah, he speaks well. He makes good sense. But let us agree that we are going to just go to a vote, up or down, on this proposal. If his side is correct, then he will prevail. But it is my opinion that he does not have a majority of this body who agree with him, and the majority of this body already has indicated that they agree with the Senator from Ohio. It is fair to point out that some Senators may have voted to cut off debate but do not intend to vote for the bill itself. But let us let the Senate vote. Let us forget all about this talk, talk, talk, which is what a filibuster is all about, and let us go to a vote, up or down, on S. 55. I say we will prevail. I say the majority of this body will want to pass this measure. The House has already passed the measure. We will send it to the President. And if the President wants to be the one to veto it, then let him go through that procedure himself and we probably do not have the votes to override the veto.

But I believe then the workers of this country and the people of this country will understand the reality of the situation. That is that Congress, by majority vote both in the House and the Senate, wanted to change the rules that presently exist between management and labor, and the President of the United States was taking the same position as President Reagan had taken, and that is that it is the right thing to do to bring in permanent strikebreakers when a strike occurs.

Let us face it. I spoke about it earlier. An overwhelming majority of peo-

ple in this country, in every poll taken, say they do not approve of the use of bringing in permanent strikebreakers. And that includes people of every economic class. It is true that those organizations, other than the business organizations of this country, those who represent some of the corporations of this country, other than that, the church groups, the religious groups, the working people, human rights and civil rights groups have indicated their support for S. 55.

Let us go to a vote while we can get the rules changed so that instead of voting on cloture tomorrow at 2:15, we will vote up or down on S. 55. If you think your arguments are so good, then you will prevail, but if my arguments are good and the rights of labor need to be protected on the floor of the U.S. Senate by passage of S. 55, then my side will prevail. I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let us be honest about it. I have had a number of Senators on your side mention to me that this is the worst bill they have seen on labor in years. But they are going to vote with you because it is in their political interest to do so. There are some who are not voting with you on your side, not very many. But—let me finish.

Mr. METZENBAUM. Will you yield to a question?

Mr. HATCH. Let me finish. I do not think there are very many people who understand this bill, but those who do and really are concerned about labor-management relations in this country know this is a special interest piece of legislation that the President is going to veto. It is a cheap vote to vote for it.

So it is really a glaring statement to say that we have the votes because we have the good ideas. The good ideas are not on the proponents' side of this matter. In fact, I think before you change the whole collective bargaining process in this country, you ought to think it through rather than bring out a committee modification at the last minute that completely changes collective bargaining in this country.

It is the same on almost all of these overreaches by organized labor that I have been familiar with over the last 16 years. People vote for them because they feel politically they have to. They know they are a problem. I understand that to a degree, except it gets old. It also denotes a cheap vote because they know if you somehow or another invoke cloture then the President has to veto it, and that veto will be sustained. We pointed that out on the first day.

Why take the time of the U.S. Senate, especially since the Senator from Ohio is so concerned about the economy? If you are so concerned about the economy on that side of the floor, you control the floor. Why are we not doing something about the economy rather than trying to change the whole collective bargaining process of this country in one fell swoop with something that has not had 1 day of hearings? Why are we wasting time on the floor of the Senate on something like that, that does not have a chance of going through no matter what you do? Why give encouragement to this type of legislation?

It is a shame to do this at this time when we have a $400 billion deficit; to have the floor tied up for 1 solid week when we only have so many days in a Presidential election year. Most people would have to conclude it is for political reasons that this is brought forth. Perhaps in the eyes of sincere people in the labor movement this is, even though they are going to lose this year, one way to gain some ground in the elections by saying that somehow or another they were stymied in getting what they believed to be a fair set of rules on labor law.

I do not see how they can say that. I do not know how they can believe that. I do not know how anybody who looks at this can believe it is a fair bill, because it certainly is not.

With regard to compulsory arbitration, I am not sure I talked in terms of compulsory arbitration except to point out Mayor Coleman Young's condemnation of compulsory arbitration, former Governor Dukakis' condemnation of compulsory arbitration, and to indicate this quasi-compelled mediation approach as it was described by the principal sponsor of it—that is what he called it—is an unfair approach because it is all slanted to one side of this delicate balance between management and labor.

I get a little tired of having it said, because I point out the difficulties in labor legislation, that I am antilabor. I was raised in the labor movement, paid the price that most people in the Congress never did of working with my hands for 10 years in the building construction trades unions, in learning a trade and being darn proud of that to this very day; darn proud of my tradesman father who taught me his trade; I have to tell you, darn proud that I knew what I was doing when doing that trade. I was proud to pay my union dues, and I would be the first to say that we need a union movement and a strong one in this country. But we do not need one that takes unfair advantage.

Yes, there is extended dialog, but only because the majority leader has chosen to go to cloture votes right from the start. The fact is a bill like this would take a week anyway, if you debated it and allowed amendments to the bill. Most people do not want amendments to the bill because they know the amendments are going to be tough amendments, they are going to be tough political votes. I do not want them either; I do not want to put my colleagues through that. The best way to not put colleagues through a bunch of tough rollcall votes is to vote no on cloture and let us end this matter so we can get about the country's business, doing something about the economic difficultues of this country rather than trying to put over labor law changes that are sweeping in nature, without any thought-process behind them.

By the way, on this compulsory arbitration, I am not somebody who does not understand it. Compulsory arbitration, of course, does away with the right to strike. There is no question about that. This would not involve compulsory arbitration, but it would be a quasi-compelled mediation on one side, and one side only. It is a hybrid that nobody can explain because there are so many loopholes in this proposal. The pending business before the Senate is no longer a bill that any Member of the Senate is familiar with, except perhaps Senator PACKWOOD, Senator MITCHELL, Senator METZENBAUM and myself, and we cannot explain it completely because it is such a sweeping change.

The pending bill has been completely replaced by this so-called committee modification that empowers a labor union—but not an employer—to send a labor dispute into this quasi-compelled mediation approach that Senator PACKWOOD has talked about. The Packwood-Metzenbaum-Mitchell substitute that Senator PACKWOOD talked about has been described in the media by some as a last minute concession by organized labor which would limit its ability to strike. That is not correct. There is no way that is correct.

The substitute gives labor a new weapon in addition to the right to strike. That is the right to send a dispute into this quasi-compelled mediation whenever it chooses. It has the sole right to do that. Management does not have that right whenever it chooses. If the company does not accept a factfinder's recommendations as a final agreement and the union does, the company loses its right to hire permanent replacements, the only correlative right it has to offset the right to strike, the only real effective offset to that particular approach.

Further, once a union invokes the quasi-compelled mediation proceeding, the employer's right to hire replacement workers is suspended. Once they accept, it is suspended. The employer loses its relative right while there is no limit on the union or how many times the union can invoke this quasi-compelled mediation. No limit. They can do it any time they turn around.

I will note the lack of equities. Only the union can invoke quasi-compelled mediation, not the employer. The employer does not have any right to do that. If the employer rejects the arbi-

trator's recommendations and the union accepts them, that decision is final, and the replacement ban goes into effect, whereas the union can change its mind any time it wants to and accept the recommendations which it previously had rejected, or it can seek even a new quasi-compelled mediation proceeding.

Talk about slanting everything in favor of one side. That is what this does. It is worse than the original S. 55. And it does not take any brains to figure that out.

This year's Caterpillar strike illustrates why organized labor would benefit greatly under this substitute. Let me just talk about that for a minute.

The UAW, the United Auto Workers, struck the employer for 5 months. That is after the employer lost $400 million the year before. So the employer is in economic distress anyway.

Now it suffered a 5-month strike and the union refused to sign any offer that did not exactly replicate its contract with John Deere. That is called patterned bargaining. After 5 months of having counteroffers rejected by the union, the company threw up its hands and said, "We cannot continue. We are going to go down unless we can hire permanent replacements. So we are going to do that. But we do not want to," they said. "We want you to come back. We will do all of these things including give you a guaranteed 6 years' full pay if you lose your job within a 6-year period." That is pretty big terms. The average wage is $40,000 a year for blue-collar workers in that business.

So the company threw its hands in the air and said, "We are going to have to hire replacement workers." They got 30,000 calls, I heard, for those jobs. That is how good those jobs are.

Well, the union realized that management meant business and they returned to work under the company's last offer.

Now, under the Packwood-Mitchell-Metzenbaum approach, the union would return to work, but it could then invoke the compulsory or quasi-compelled mediation and mediators would be required to recommend a contract that would produce, according to this amendment, "a prompt, peaceful, and just settlement."

That settlement, accordingly, would likely be much higher than Caterpillar would feel that it could afford if it was the Caterpillar situation under this bill. Caterpillar's choices would then be: One, to accept the findings of the factfinding board; or two to reject the findings, have its right to hire replacement workers extinguished, and then watch the union go back on strike until the company accepted either the union's demands or the factfinding board's recommendations.

What is fair about that? How can that possibly be fair? In other words, organized labor really loses absolutely nothing. They risk nothing on this process under the Packwood-Mitchell-Metzenbaum approach.

On the contrary, this substitute amendment gives the unions much more control over the bargaining process and the power to produce higher wage settlements than under present law. It is a lot worse than S. 55.

I am prepared to finish for today, but there is one part of it that I think needs to be brought up, and that is the issue of unresolved issues in the dispute.

Now, this factfinding board will issue its findings and recommendations as to all unresolved issues.

In other words, the union can throw anything out it wants to as an unresolved issue. And it should be noted that these issues could include so-called permissive subjects of bargaining. These are items that are generally thrown out before they get a bargaining agreement. These are bargaining subjects which the parties may be prohibited under current law from using as economic weapons, that is, a strike or a lockout by either side to force the other party to agree.

For example, a union cannot strike a mine operator to force its trade association to bargain on its behalf, nor, significantly, can a union strike force an employer to agree to a binding procedure for renewing a collective bargaining agreement. Yet the Packwood-Metzenbaum substitute would require the arbitration panel to resolve these issues, something that would never ordinarily be part of the collective bargaining process. And guess who is going to win on those issues? That is an important thing, and it is only one of many that I intend to bring out again tomorrow.

The fact is this is a one-sided proposal that basically gets rid of the one thing that brings this delicate matter into balance: the right of management to permanently hire or replace. It turns everything in favor of the unions.

Now, with regard to the PATCO strike, I get a little upset by having that continually thrown in the face of anybody who argues against this committee substitute or modification.

First of all, the PATCO strikers broke the law. Like the Postal Service workers, they had no right to strike. But they struck. They went out in defiance of the law and, frankly, as much as I would like to have seen some of them get their jobs back, the administration did the right thing. It made it clear that the Federal Government is not going to tolerate breaches of the law like that, breaches of the law that cause the safety violations and the safety problems that the PATCO strikers caused. They broke the law. They had to face the law when they broke it.

In this proposal we are talking about rights in the nonpublic sector for unions to strike. PATCO did not have the right to strike, and therefore the administration fired them. They did not permanently replace them under a permanent replacement Mackay approach. They fired them, as they should have done.

PATCO thought that because of the specific nature of their jobs and the difficulties of replacing them, nobody could do so, and it was difficult for a while and it did put some airports in jeopardy. It did make it less safe in the airways.

But there is another important principle here, and that is the Federal Government cannot be shut down by public sector workers. There is a very important reason for that. As a general rule, public sector workers are protected in their jobs and generally are paid pretty well; most do a wonderful job, but for those protections and that civil service right, or set of rights, they give up their right to strike.

So do not keep acting like it was a tremendously wrongful thing the Government did under the Reagan administration to fire them and to hire replacements.

Many people would argue it was the right thing to do because they broke the law.

Now, I may have personally hired a number of them back and brought them back because of the needs of society. But nobody should weep for those who break the law.

So do not keep throwing that up to us. We are talking about a different situation. We are talking about private sector unions in collective bargaining relationships with their private sector managers and in a balance of power between private parties that needs to be delicately balanced so that neither gets control over the other. I do not want the unions to lose their right to strike, but I also do not want management to lose its right to fight back if they have to.

There is one other aspect of this that I think is very important, and that is the laws are slanted to a degree in favor of the trade unions, and that is as it should be; they need to organize in many of these large businesses in order to have equity, in order to be protected. I have fought for the right for them to organize. I fought for their rights to strike. I fought for their rights to have collective bargaining rights and protections under the law, but I have also fought against excesses in legislation year after year after year and I get a little tired of being told that I am antiunion when I am one of the few who came up through the union movement and who understands it fully and completely.

I think here is an importance in having a delicate balance. This legislation upsets that balance. It puts the power to one side rather than the other in an unfair way, in a convoluted piece of legislation that overrules 54 years of

collective bargaining rules and regulations, laws and Supreme Court decisions which have worked well for our society, all because 3 percent of strikers in 1989 were in a permanent replacement situation.

It is a negligible statistic but it is important because it does say that if you are going to strike, it is a wonderful, awesome power, but you might have to face being replaced if you do. That generally is why we do not have too many, do not have a huge number of strikes in our society today. It is because there are balancing risks that make both sides think twice before they get too ridiculous against the other side. This is important.

Mr. President, I think it is important for people to read this bill, realize the loopholes, and realize how bad it really is. I hope that our colleagues will, and I really believe that if this was a secret ballot we would win it up and down. I do not think there is any question about it. But it is not a secret ballot. It is overlaid with political ramifications in a political year, a highly political-laden year.

But am I going to malign my friends who do not believe in this approach. There are some in this body who really believe that this is a way the collective bargaining ought to go. I cannot find fault with that. I believe that people who are sincere about things have an edge over others who are not. But I also know there are many who have voted for cloture last Thursday who know that this is a bad bill, who know the Packwood modification is a bad bill and who, in a secret ballot, would vote against this bill up and down. I believe a majority would if it was a secret ballot.

It is not a secret ballot. I am glad that it is not. But do not let the politics of this Presidential year, this extremely politically laden year, lead anybody to believe that just because you have 55 votes, people really believe in this type of legislation. They do not. I am prepared to say you really have 57 because I believe that Senators WIRTH and GORE will vote on your side. I think you are counting on it. They are cosponsors of the original underlying bill, as I understand it. I have no doubt there will be at least that many and maybe more who will vote for it.

But again, if it was a secret ballot, I think we would win it up and down.

Mr. President, I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, my colleague from Utah talks about this as being special interest legislation. My colleague from Utah makes a very interesting point: that he has fought for unions, has recognized the right of laboring people to work together, band together in unions, and he has fought for them over a period of many years.

I admit my eyesight is not so good, but I must say that in 17 years that I have been here I have never seen an instance in which my colleague from Utah has been that supportive of the rights of organized labor. He has consistently been the leading advocate, and rightfully so, and understandably so, for the business community.

So when he says that he has fought for organized labor in the past, been a member of the labor union, and worked with his hands, that is well and good. But the fact is this is an issue that is at this very moment breaking the backs of organized labor and destroying the American labor movement.

My colleague would call the people who are in labor unions "special interest" people. That is the term he uses. But in this case, the special interest people are 16 million working Americans who are union members, and these are people who work with their hands every day. They go to work early in the morning, they come home at night, they have families, their children go to school, they go to public schools, private schools, parochial schools, whatever the case may be. They are the referees and the umpires and the coaches in little leagues; they are the people who are the bulwark of the community.

They live in modest homes. They do not live in mansions. They are very decent, fine, human beings, and they have been members of labor unions for a good many years, and they thought that through the labor union there would be some equity, that they could bargain with their employers. But now some employers, too many in this country, have made up their minds that they can break their unions, bust their unions.

Too many of those employers who are inclined to do that are not the old guard companies. I really have not heard of General Motors talking about bringing in striker replacements. I have not heard of AT&T bringing in striker replacements. I have not heard of a number of other major American corporations talk about bringing in striker replacements. In too many instances we find it is the new management, the highflying leveraged buy-out artists who come in and immediately try to figure out how they can bust the union.

My colleague says that he is concerned about those working people. Well, concern is best evidenced by actions, not by words. Not only are working people involved in this legislation, concerned about busting the unions, but those who are concerned about civil rights, those who are in the churches, in the synagogues, have comes out publicly in support of this legislation because they recognize what it means to America to bust the organized labor movement in this country.

That is the real issue before us. Do you want an organized labor movement? Do you want people to be able to join a union? Or do you think we ought to turn the clock backward and go to the point where it is every man or woman for himself or herself?

Hundreds of State and local government leaders have indicated their support of this legislation. Some States, as I previously mentioned, have already passed legislation trying to deal with this very issue.

The special interest that is involved here is the national interest, not the special interest of any particular group of people. On the other side, who is opposing it? Do you know any major church group in this country, Catholic, Protestant, Jewish, Muslim, any group that opposes this bill? No. Indeed, a considerable number, a substantial number, are supporting this legislation.

But the business community, led around by corporate lobbyists with their big PAC dollars, have made every single effort to defeat this legislation. Yet a majority of the Members of this body are prepared to vote for it. My colleague suggests that it is because of their political interest that they are voting for it. I would say to my colleague, oh, yes, that is probably true. But who is to suggest that his or her position at this moment is not by reason of his or her political interest, or to suggest that any other Member of this body does not have a political interest?

One of the great things about the American political system, with all of its faults, is that a democracy to a very substantial extent works. So if some Members of this body see fit to vote for it, on both sides of the aisle, because they think a substantial block of their constituency supports the legislation, that is fine. That is the American way. I do not know why my colleague from Utah would be opposed to that system.

My colleague has made some very persuasive arguments. He probably has used twice as much time as I have this afternoon. He may well have persuaded a number of the Members of this body to change their view, and it is for that reason that I would suggest that we not play these games with a cloture vote as to whether we will cut off debate.

Why do we not agree, he and I, that we get unanimous consent, get leadership on both sides to agree, that we will just vote on this measure as modified by the Packwood amendment—and he has attacked some of the provisions of that amendment—that we will agree to vote up or down on the bill as it stands before us? Because I believe that 51 Members of this body will vote for it. If we only get 49, we lose. But I do

not see any reason why we have to get 60. And his arguments have been so wonderfully persuasive that I think he and I ought to come to an agreement as the managers of the bill, he and I, I for the bill, he against it, let us come to an agreement, let us be reasonable men, let us come to an agreement that we will vote on the bill up or down. If I win, the bill is in. That is the proposal we send back to the House. And if he wins, then it is all over. Or does he insist that we have to get 60 votes in order to really move forward with this legislation?

So I ask my colleague, will he be willing to enter into a unanimous-consent agreement that we vote up or down on the measure, including the Packwood-Metzenbaum amendment, or does he insist we go to the cloture vote?

Mr. HATCH. Mr. President, to answer that question, there are sometimes issues that come to the floor that are so important that we provide for this very, very special rule of protection to the minority that allows for extended educational dialog. And frankly, this is that important.

Before I will permit a complete change, an overhaul, really, in the wrong direction of the labor laws of this country that have stood this country in such good stead for the last 54 years, I think that it is incumbent upon the proponents of this legislation—especially since they have brought this committee modification that no one has ever seen before last Thursday and which is different today than it was last Thursday—to have hearings, complete consideration by the committee of jurisdiction, of which I am the ranking member, and to stop this insane practice of every time we do a labor bill. When they find they cannot pass it the way they want to pass it, or get it through the way they want to get it through, then they start modifying it and changing it in drastic ways right here on the floor.

I am not saying you cannot do that; but we have a right to stand up and say we are not going to tolerate that. It is the wrong way to legislate. And we are not just talking about some minor modification of the labor laws; we are talking about a modification here that will completely change the collective bargaining labor laws of this country. That is pretty important.

I just hope that our colleagues on both sides of the aisle realize the importance of this issue, because we are not standing here fighting over something that is trivial. This is very, very important.

Again, I commend those who feel strongly that this is the right way to go. I do not think there are many, deep down, that understand this legislation who feel that way. But there are a few. I cannot find fault with that. What I find fault with—and by the way, I feel sincerely and strongly, not politically, for the arguments that I have been talking about—is that I have noticed that throughout this debate, my colleague from Ohio seems to attack me personally. I am not attacking him personally. He knows that I have stood up against labor law excesses since I have been here. But I have also stood on the side of labor in a wide variety of legislation.

To mention one that comes up, there is the Polygraph Protection Act, the so-called Kennedy-Hatch or Hatch-Kennedy bill that protects organized labor. I could go into others, but I suggest that there are a lot of other bills that we have worked on to protect organized labor. There are bills that may protect them economically because they are fiscally sound, like the balanced budget amendment that would help the labor people, who work their guts out day after day and pay all the taxes, and in the end find we are spending $400 billion into deficit every year.

I think that may be more important than some of these major changes upsetting the delicate balance in the National Labor Relations Act.

So I can match the Senator from Ohio point for point, bill for bill, and fight for fight. But I am not going to attack him personally. I think he is a marvelous Senator with whom I happen to disagree.

The other day, I think the distinguished Senator suggested that I was hypocritical because I have taken PAC money in the past. Well, almost everybody in this body has. And political action committees are made up of individual contributors, many of whom are workers in these various places. It is the only way they can participate in the system.

Be that as it may, I have stood ready to do away with PAC's; while his party, arguing for campaign finance reform, has argued for PAC's, and to reduce them from $5,000 to $2,500. I do not blame him for that. But he should not blame me. I think most people who know me know I stand up for the things I believe in, and I do not play political games around here. Look at child care, when I stood up against my party, the President, and everybody else. I can name a lot more, if you would like me to.

When we debate these matters, let us debate them on the merits. I do not think we have to attack each other personally. I have a great affection for my friend from Ohio. He is my neighbor in the Russell Building. He is a formidable opponent, one of the strongest people in the Senate He believes in what he is doing. I would not suggest he does not.

I believe in what I am doing, and I think most people would say I stand up for what I believe in all the time, win or lose. I think most will say I lose graciously when I do; and naturally, I have to most of the time, because this body has been controlled by a philosophy quite different from mine for most of my 16 years here. We came to the Senate together; I intend to always be his friend.

Let me tell you something. This is serious stuff. It is not a question of politics. It is not a question of trying to pour it on the unions or on management. It is a question of what is right for this country and for the collective bargaining system of this country. It is a question of whether or not we are going to continue down a road toward collectivism in this country, or whether we are going to continue to provide for a vibrant, free market system, such as it is, that gives both sides a chance in collective bargaining relationships and both sides balanced right to try to make their case.

I believe our laws have worked. I believe this will gum up the laws. I believe it is slanted. I think I have made a case that it is slanted to one side, when the unions only can request the factfinding board; when only the unions, if they reject the factfinding board, can then come back later and cut off the right to permanently hire. Those are advantages they do not currently have.

The only chance that management has now is that management can offset the right to strike by saying: "Look there is a point where we are going to permanently hire people and replace you if you continue to stay out, because our business will not survive if you do."

This is fair. It is fair, and it has worked. And I think it is overblown to say that PATCO—a very different strike by Federal employees, who broke the law because they did not have a right to strike—applies to this particular matter.

I care for my colleague from Ohio. We are going to be friends until the day both of us die, I hope. Certainly, I am going to be his friend. I respect him. He is one of the more articulate and intelligent people in this body. He stands up for what he believes, and he cares deeply in what he believes, as does my colleague in the chair right now. I respect that. I above all people, respect that. I hope the Senator will show the same deference and respect to me.

That is the way I am. I am opposing him on this issue because I believe I am right. If I did not believe it, I would not stand up on this floor and oppose him. I am going to do the best I can to defeat this legislation, within the rules. And I think if we do defeat it, it will be in the best interest of the country, and I think in the best interest of my fellow union members.

As one who has held a union card, I think I may be in a better position, in some ways, to talk about these matters than those who have not had union cards, even though they may be very sincere and intelligent.

I yield the floor.

Mr. METZENBAUM. Mr. President, I will respond to my friend and colleague, because he is a friend. His office is just across from mine. We meet socially, and we know each other well.

I want to say without any reservation that if any of my comments appear to be personal attack, I certainly did not mean them that way, and I would apologize for doing so.

The Senator points out that, in a burst of enthusiasm the other day, I suggested that his action in accepting PAC money, while condemning others who had received PAC money from labor groups, was hypocritical. I think that was an overabundance of enthusiasm on my part, and I withdraw the statement and expunge it from the RECORD.

It is a fact that in recent years this body has passed some good laws by modifying Labor Committee substitutes. The Civil Rights Act of 1991 is one of them. The Older Workers Benefit Protection Act is another one.

The Senator from Utah supported both of those pieces of legislation, and helped pass them, once majority support was clear. I think that when he joins with us—there is no secret about it—it is much simpler to get legislation passed in this body.

He is respected by his colleagues on both sides of the aisle. I think this is such a fine piece of legislation that I hope he will see fit to join us now, and I think we could pass it and then we could go home and live happily ever after.

But since he is not willing to do that, I want to come back and just ask him for a yes or no answer. Would he be willing to agree to have an up or down vote on this pending proposal and vitiate the need for a cloture vote?

Mr. HATCH. Well, the cloture vote is already set by unanimous consent. We could vitiate it, but I do believe that is, under the rules, the way to pursue this matter, because I really believe, if this were a secret ballot, there is no question this bill would be defeated on its face.

Mr. METZENBAUM. Do I understand that to be a "no"?

Mr. HATCH. The answer is "No."

Mr. METZENBAUM. Mr. President, I have nothing further to say. I think my colleague from Utah has nothing further. I see no one on the floor.

MORNING BUSINESS

Mr. METZENBAUM. Therefore, Mr. President, I ask unanimous consent that the Senate proceed to morning business

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ENROLLED BILL AND JOINT RESOLUTIONS PRESENTED

Under the authority of the order of the Senate of January 3, 1991, the following enrolled bill and joint resolutions were signed on June 12, 1992, during the recess of the Senate, by the President pro tempore [Mr. BYRD]:

S. 756. An act to amend title 17, United States Code, to copyright renewal provisions, and for other purposes;

H.J. Res. 442. Joint resolution to designate July 5, 1992, through July 11, 1992, as "National Awareness Week for Life-Saving Techniques"; and

H.J. Res. 445. Joint resolution designating June 1992 as "National Scleroderma Awareness Month."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Commitee on Finance, with an amendment in the nature of a substitute:

H.R. 5260. A bill to extend the emergency unemployment compensation program, to revise the trigger provisions contained in the extended unemployment compensation program, and for other purposes.

Mr. BENTSEN. Mr. President, on behalf of the Committee on Finance I have today reported the bill H.R. 5260, the Unemployment Compensation Amendments of 1992. I ask unanimous consent that a summary of the bill, as reported, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1992 (H.R. 5260) AS REPORTED BY THE COMMITTEE ON FINANCE, JUNE 11, 1992

PART I—BENEFIT PROVISIONS (Titles I–IV)

I. EXTENSION OF EMERGENCY UNEMPLOYMENT COMPENSATION (EUC) PROGRAM

Present Law

The Emergency Unemployment Compensation (EUC) program, first enacted in November 1991 and amended most recently on February 7, 1992, currently provides 33 weeks of emergency unemployment benefits to long-term unemployed workers who live in States that qualify as "high unemployment" States. Workers in all other States may receive up to 26 weeks of emergency benefits. These benefits are payable to individuals who have exhausted their regular State benefits (generally 26 weeks).

In order to qualify for 33 weeks of benefits, a State must have either (1) a total unemployment rate (TUR) of 9 percent or higher for the period consisting of the most recent 6-month calendar period for which data are published, or (2) an adjusted insured unemployment rate (AIUR) of 5 percent or higher for the most recent 13 week period. In determining the adjusted rate of insured unemployment, the Secretary is directed to take into account individuals who have exhausted their rights to regular compensation during the most recent 3 calendar months for which data are available.

Number of Weeks of Benefits for States as of May 31

26 Weeks: Alabama, Arizona, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Virginia, Wisconsin, Wyoming.

33 Weeks: Alaska, Arkansas, California, Connecticut, Idaho, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia.

Benefits are fully Federally-funded out of the Extended Unemployment Compensation Account, except for benefits for employees of non-profit and governmental entities, which are paid out of general revenues.

Individuals who become eligible for emergency benefits after June 13 will qualify for up to 20 weeks of benefits in "high unemployment" States, and 13 weeks of benefits in all other States. Those who exhaust their regular State benefits after July 4 will not be eligible for any weeks of emergency benefits.

Explanation of Provision

The schedule of benefits enacted on February 17 (33 weeks for workers in high unemployment States and 26 weeks in all others) will be continued for so long as the seasonally-adjusted national unemployment rate remains at 7 percent or higher. However, if for two consecutive months the national unemployment rate falls below 7 percent, the number of weeks of benefits will be reduced to 15 and 10. The number of weeks of benefits will be further reduced (to 13 and 7 weeks) if, for two consecutive months the national unemployment rate falls below 6.8 percent.

The EUC program would expire on March 6, 1993. Workers who exhaust regular State benefits after that date would be ineligible for EUC benefits. Individuals who began receiving EUC benefits on or before that date would be entitled to the full number of weeks of benefits for which they were found eligible.

The new EUC benefits would be paid out of general revenues.

II. OPTIONAL EXTENDED BENEFITS (EB) TRIGGER

Present Law

Under present law, unemployed workers are paid up to 26 weeks of regular unemployment benefits financed by State unemploy-

ment taxes on employers. In States with high unemployment, the extended benefits (EB) program pays up to 13 weeks of additional benefits to workers who have exhausted their regular State benefits. The EB program is a joint Federal-State program, half of which is financed by Federal unemployment taxes on employers and half by State taxes.

The EB program is activated in a State when: (1) the State's insured unemployment rate (IUR) has averaged at least 5 percent for 13 consecutive weeks, and (2) that rate is at least 120 percent of the State's average insured unemployment rate for the corresponding 13-week period in both of the 2 preceding years. At their option, States may apply an alternative trigger mechanism. Under the alternative, extended benefits may be paid if a State's insured unemployment rate is at least 6 percent, even though the rate is less than 120 percent of the rate in the preceding 2 years.

Explanation of Provision

Effective March, 1993, States would have the option of using an additional alternative trigger. Under this option, EB benefits would be paid when: (1) the State's seasonally adjusted total unemployment rate (TUR) for the most recent 3 months is at least 6.5 percent and, (2) that rate is at least 110 percent of the State's average TUR for the corresponding 3-month period in either of the 2 preceding years.

III. OTHER PROVISIONS

A. Extension of Benefits for Railroad Workers

Present Law

Workers in the railroad industry are eligible for a separate unemployment compensation program that provides benefits basically equivalent to those provided under the regular State unemployment compensation programs. Under current law, railroad employees with less than 10 years of service in the railroad industry are not eligible for any extended benefits due to a statutory flaw in the trigger mechanism. However, the unemployment legislation enacted previously to provide emergency unemployment benefits to other workers also provided additional weeks of extended benefits for qualifying railroad workers (P.L. 102-164, P.L. 102-182, and P.L. 102-244). These special benefits for railroad workers expire July 4, 1992.

Explanation of Provision

The period during which qualifying railroad workers may qualify for benefits would be extended to March 6, 1993. This provision is being included at the request of the Committee on Labor and Human Resources.

B. Modify Work Search Rules for Areas of High Unemployment

Present Law

Federal rules enacted in 1980 require "systematic and sustained" work search by individuals who are receiving EB benefits. These same rules apply to recipients of EUC benefits. The Committee has heard testimony that these rules, as interpreted by the courts, frequently require workers to make repeated contacts with employers each week, even in areas where unemployment is very high and there are very few employers.

Explanation of Provision

The Governor of a State would be allowed to waive the Federal work search rules (and apply State rules instead) in an area that the Governor designates as an area of exceptionally high unemployment. The Secretary of Labor would be authorized to issue regulations providing guidelines for determining the circumstances under which waives could be granted. The provision would be effective upon enactment and would apply to both the EUC and EB programs.

C. Modify EUC and EB Eligibility Criteria

Present Law

In determining whether a worker is eligible for benefits under the emergency unemployment compensation program, a State must follow the eligibility rules that apply to the permanent extended benefits (EB) program. The EB statute provides that an individual may not be eligible for extended benefits unless, in the base period used to determine the individual's eligibility for regular State benefits, the individual meets one of the following three requirements: (1) had 20 weeks of full-time insured employment; (2) had covered earnings which exceed 40 times the individual's most recent weekly benefit amount; or (3) had covered earnings exceeding 1½ times the individual's insured wages in the calendar quarter in which the individual's insured wages were the highest. The State is required to provide by law which one of the three foregoing methods of measuring employment and earnings will be used for determining eligibility of all claimants.

Explanation of Provision

In determining EUC and EB benefits, States may use all of the three eligibility criteria that are specified in the Federal EB statute, rather than being required to choose one of three. The provision is effective upon enactment.

D. Continued Eligibility for EUC

Present law

Under current law, a worker who qualifies for regular State benefits is automatically ineligible for EUC benefits. This has resulted in a perceived "penalty" for some long-term unemployed workers who, after exhausting their regular State benefits, have tried to "do the right thing" by taking part-time or temporary jobs to tide them over until they find a permanent job. As a result of this limited employment, they may establish a new benefit year and qualify once again for regular State benefits, thus losing their eligibility for EUC benefits. EUC benefits, because they are generally paid on the basis of more sustained work history, are likely to be significantly higher than the State benefits for which these workers are newly eligible.

Explanation of Provision

If an individual exhausted his rights to regular benefits for any benefit year, the individual's eligibility for EUC benefits with respect to that benefit year would be determined without regard to any rights to regular compensation for a subsequent benefit year, so long as the individual did not file a claim for regular compensation for such subsequent benefit year. The provision is effective upon enactment.

E. Clarify that States May Operate Short-Time Compensation Programs

Present Law

Legislation in 1982 specifically authorized States to operate short-time compensation programs under which they are allowed to pay pro rata benefits to individuals who are working less than full time because their employer has a plan that provides for a reduction in work hours for employees rather than making temporary layoffs. A number of States have elected to operate such programs. However, the authorization has expired, and these programs are operating without specific statutory authority.

Explanation of Provision

Effective upon enactment, the provision would give States permanent authority to operate short-term compensation programs under which they may pay pro rata benefits to individuals who are working less than full time because their employer has a plan approved by the State agency that provides for a reduction in work hours for employees rather than temporary layoffs.

F. Provide Information About EITC Eligibility

Present Law

State agencies send Form 1099-G to all unemployment compensation beneficiaries, informing them of the amount of benefits they have been paid for purposes of filing Federal income tax returns. However, an OMB Circular requires that if the agencies include any other information with the 1099-G mailings, they must share the cost of postage, even if the additional information does not add to the total postage cost. This has created a disincentive for States to include enclosures with these mailings.

Explanation of Provision

Effective upon enactment, States would be allowed to include information on the earned income tax credit (EITC) in their Form 1099-G mailings at no cost as long as the additional information does not increase the postage costs of the mailing.

G. Provide Information About Taxation of Benefits

Present Law

Unemployment compensation benefits are taxable income for purposes of Federal income tax law. However, there is no provision for income tax withholding from these benefits, and individuals are sometimes unaware of their tax liability.

Explanation of Provision

Effective October 1, 1992, State agencies would be required to provide information to recipients about taxation of benefits and make information forms available for filing estimated taxes.

PART II—REVENUE PROVISIONS (TITLE V)

Subtitle A. Alternative Taxable Years

1. Taxable Year Election for Partnerships, S Corporations, and Personal Service Corporations (secs. 501-504 of the bill and secs. 280H, 444, and 7519 of the Code)

Present Law

In general

A partnership is generally required for Federal income tax purposes to use the taxable year that is used by a majority of its partners. An S corporation is generally required for Federal income tax purposes to use the calendar year as its taxable year. A personal service corporation also is generally required for Federal income tax purposes to use the calender year as its taxable year.[1]

A partnership, S corporation, or personal service corporation, however, may elect to use a taxable year other than the required taxable year. In the case of a partnership, S corporation, or personal service corporation that is adopting a taxable year or changing a taxable year, the taxable year that may be elected generally may not result in a deferral period of more than three months. For this purpose, the deferral period generally is the number of months between (1) the beginning of the taxable year of the partnership, S corporation, or personal service corporation, and (2) the close of the first required taxable year that ends within such year.

A partnership, S corporation, or personal service corporation is required to obtain the

Footnotes at end of article.

approval of the Internal Revenue Service in order to change to a taxable year other than the required taxable year. A partnership, S corporation, or personal service corporation that terminates an election to use a taxable year other than the required taxable year may not make an election for any subsequent taxable year.

An election may not be made by a partnership, S corporation, or personal service corporation that is part of a tiered structure other than a tiered structure that is comprised of one or more partnerships or S corporations, all of which have the same taxable year. An electing partnership, S corporation, or personal service corporation that becomes part of a proscribed tiered structure is considered to have terminated its election.

Required payment for electing partnerships and S corporations

A partnership or S corporation that elects a taxable year other than the required taxable year is required to make a payment to the Internal Revenue Service (a "required payment") that is designed to compensate the Federal government for the deferral of tax that results from the use of a taxable year other than the required taxable year. The amount of the required payment for any taxable year for which an election is in effect (an "applicable election year") equals the excess (if any) of (1) the highest rate of tax in effect under section 1 of the Code plus 1 percentage point multiplied by the net base year income of the partnership or S corporation, over (2) the net required payment balance. The net required payment balance is the aggregate amount of required payments less refunds of required payments for all preceding taxable years for which an election was in effect.

The required payment is due on May 15 of the calendar year that follows the calendar year in which the applicable election year began. The required payment is required to be refunded by the Internal Revenue Service if certain conditions are satisfied. No interest is to be paid by the Internal Revenue Service with respect to a refund of a required payment.

Minimum distribution requirement for electing personal service corporations

A personal service corporation that elects a taxable year other than the required taxable year is required to satisfy a minimum distribution requirement that applies to applicable amounts paid by the personal service corporation.[2] If the minimum distribution requirement is not satisfied for any taxable year for which a taxable year election is in effect, the deduction otherwise allowed for applicable amounts paid or incurred during such taxable year is limited to the applicable amounts paid during the deferral period of the taxable year multiplied by a ratio, the numerator of which is the number of months in the taxable year and the denominator of which is the number of months in the deferral period of the taxable year.

The minimum distribution requirement is satisfied with respect to a taxable year only if the applicable amounts paid or incurred during the deferral period of the taxable year equal or exceed the lesser of (1) the applicable amounts paid during the preceding taxable year multiplied by a ratio, the numerator of which is the number of months in the deferral period of the taxable year and the denominator of which is the number of months in the taxable year, or (2) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

A net operating loss carryback is not allowed to or from a taxable year of a personal service corporation for which a taxable year election is in effect.

Reasons for Change

The committee believes that the limitations on the taxable years that may be elected by partnerships, S corporations, and personal service corporations have resulted in an excessive burden on tax return preparers due to the concentration of workload during a limited portion of the year. In order to more evenly spread this workload throughout the year, the committee believes that a partnership, S corporation, or personal service corporation should be allowed to elect any taxable year, provided that the tax benefit from the deferral of income that is available through the use of a taxable year other than the required taxable year is eliminated through other means.

Explanation of Provision

In general

The bill allows a partnership, S corporation, or personal service corporation to elect any taxable year without regard to the length of the deferral period of the taxable year elected. If a partnership, S corporation, or personal service corporation, however, has annual reports or statements that (1) ascertain the income, profit, or loss of the entity, and (2) are used for credit purposes or are provided to the partners, shareholders, or other proprietors of the entity, then the entity may only elect a taxable year that covers the same period as such annual reports or statements.

The bill also repeals the provision of present law that prohibits a partnership, S corporation, or personal service corporation from electing a taxable year other than the required taxable year if an earlier taxable year election has been terminated. The bill continues to require a partnership, S corporation, or personal service corporation to obtain the approval of the Internal Revenue Service in order to change a taxable year (including, unlike present law, a change to the required taxable year).

The committee anticipates that the Internal Revenue Service will provide a procedure by which a partnership, S corporation, or personal service corporation may expeditiously obtain the approval of the Internal Revenue Service in order to change a taxable year (for example, by timely filing a form with the Internal Revenue Service). The committee anticipates that this "automatic consent" procedure will only apply to a partnership, S corporation, or personal service corporation that has not changed its taxable year within the past 6 calendar years, except that the 6-year limitation will not apply to any partnership, S Corporation, or personal service corporation that has changed its taxable year in order to comply with the taxable year requirements contained in the Tax Reform Act of 1986.

The committee also anticipates that the "automatic consent" procedure will require any net operating loss of a personal service corporation that arises in a short period required to effect a change in taxable year to be deducted ratably over a 6-year period beginning with the first taxable year after the short period. In addition, the committee anticipates that the "automatic consent" procedure will require any excess of deductions over income of a partnership or S corporation that arises in a short period required to effect a change in taxable year to be take into account by the partners or shareholders over a 6-year period beginning with the taxable year of the partners or shareholders that includes the last day of the first taxable year of the partnership or S corporation that occurs after the short period.

The bill also provides that a taxable year election is to remain in effect until the partnership, S corporation, or personal service corporation terminates its election and changes to the required taxable year.[3] A change from a taxable year that is not a required taxable year to another taxable year that is not a required taxable year is not treated as a termination of the taxable year election unless the taxable year is allowable by reason of a business purpose.

The bill provides that a partnership, S corporation, or personal service corporation is not to be considered part of a tiered structure solely because a trust the beneficiaries of which use the calendar year owns an interest in the partnership, S corporation, or personal service corporation. Consequently, an election of a taxable year other than the required taxable year may be made by a partnership, S corporation, or personal service corporation with respect to which a trust owns an interest if all of the beneficiaries of the trust use the calendar year and the partnership, S corporation, or personal service corporation is not otherwise considered to be part of a proscribed tiered structure.

Required payment for electing partnerships and S corporations

The bill increases the amount of the required payment that must be made by a partnership or S corporation that elects a taxable year other than the required taxable year (including any partnership or S corporation that has an election in effect on the date of enactment of the bill). Under the bill, the amount of the required payment for any applicable election year equals the excess (if any) of (1) the highest rate of tax in effect under section 1 of the Code as of the close of the first required taxable year ending within the applicable election year plus 2 percentage points, multiplied by the net base year income of the partnership or S corporation, over (2) the net required payment balance.

In addition, the bill requires an additional required payment for any new applicable election year of a partnership or S corporation. For this purpose, a new applicable election year is defined as any applicable election year that either (1) immediately follows a taxable year for which a taxable year election was not in effect, or (2) covers a different period than the preceding taxable year by reason of a change in the taxable year elected. If, however, the applicable election year described in the preceding sentence is a short taxable year that does not include the last day of a required taxable year, then the new applicable election year is the taxable year immediately following the short taxable year.

In the case of a new applicable election year that does not result from a change in the taxable year elected, the amount of the additional required payment equals 75 percent of the amount of the required payment for such applicable election year (determined without regard to the additional required payment). In the case of a new applicable election year that results from a change in the taxable year elected, the amount of the additional required payment equals 75 percent of the excess (if any) of (1) the amount of the required payment for such applicable election year (determined without regard to the additional required payment), over (2) the amount of the required payment for such applicable election year (determined without regard to the additional required payment)

determined by using the deferral ratio and the deferral period that applied to the taxable year that was used prior to the change.[4]

The additional required payment is required to be made on or before September 15 of the calendar year in which the new applicable election year begins. A partnership or S corporation that fails to make the additional required payment by the due date of such payment is treated as having terminated the taxable year election and changed to the required taxable year.

In determining the net base year income of a partnership or S corporation for purposes of the required payment (including the additional required payment), the base year is defined as the first taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation that precedes the applicable election year.[5] In addition, in the case of a new applicable election year, the net income for the base year is to be increased by the excess (if any) of (1) the applicable payments taken into account in determining net income for the base year, over (2) 120 percent of the average amount of applicable payments made during the 3 taxable years immediately preceding the base year.[6]

The bill also requires interest to be paid by the Internal Revenue Service with respect to a refund of a required payment but only for the period that begins on the date that the refund is payable and that ends on the date of the payment of the refund.

Minimum distribution requirement for electing personal service corporations

The bill modifies the minimum distribution requirement that must be satisfied by a personal service corporation that elects a taxable year other than the required taxable year (including a personal service corporation that has an election in effect on the date of enactment of the bill). The minimum distribution requirement is satisfied with respect to a taxable year only if the applicable amounts paid during the deferral period of the taxable year equal or exceed the lesser of (1) 110 percent of the applicable amounts paid during the first preceding taxable year of 12 months (or 52–53 weeks)[7] multiplied by a ratio, the numerator of which is the number of months in the deferral period of the taxable year and the denominator of which is 12, or (2) 110 percent of the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

The bill also permits a personal service corporation to carry back a net operating loss from a taxable year for which a taxable year election was in effect to a taxable year for which a taxable year election was in effect.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

Subtitle B. Pension Distributions

1. Rollover and Withholding on Nonperiodic Pension Distributions (secs. 511–513 of the bill and secs. 402 and 3405 of the Code)

Present Law

Distributions from tax-qualified pension plans (secs. 401(a)), qualified annuity plans (sec. 403(a)), and tax-sheltered annuities (sec. 403(b)) generally are includable in gross income in the year paid or distributed under the rules relating to the taxation of annuities. A total or partial distribution of the balance to the credit of an employee under a qualified plan, a qualified annuity plan, or a tax-sheltered annuity may, under certain circumstances, be rolled over tax free to another plan or annuity or to an individual retirement arrangement (IRA). A rollover of a partial distribution is permitted if (1) the distribution equals at least 50 percent of the balance of the credit of the employee, (2) the distribution is not one of a series of periodic payments, (3) the distribution is made on account of death, disability, or separation from service, and (4) the employee elects rollover treatment. For purposes of the rule denying rollover treatment in the case of certain periodic payments, nonperiodic payments made before, with, or after the commencement of the periodic payments are not treated as part of the stream of periodic payments.

Minimum required distributions and after-tax employee contributions may not be rolled over. The rollover must be made within 60 days of the date of distribution.

Income tax withholding on pension distributions is required unless the payee elects not to have withholding apply. If no election is made, tax is withheld from nonperiodic payments at a 10-percent rate, unless the payments are part of a qualified total distribution, in which case tables published by the Internal Revenue Service are used to determined the withholding rate. A qualified total distribution generally is a payment within one year of the entire interest in a plan.

Reasons for Change

The complexity of the present-law rollover rules create needless problems for individual taxpayers. For example, the restrictions on rollovers lead to inadvertent failures to satisfy the rollover requirements. Liberalization of the rollover rules will increase the flexibility of taxpayers in determining the time of the income inclusion of pension distributions and will encourage taxpayers to use pension distributions to provide retirement income.

A significant source of lost pension benefits is preretirement cashouts of pension savings in lump-sum distributions. The bill facilities the preservation of retirement benefits for retirement purposes by requiring plans to transfer eligible rollover distributions directly to an IRA or another qualified plan. Withholding ensures that taxpayers will be able to satisfy their tax liabilities.

Explanation of Provision

Under the bill, any part of the taxable portion of a distribution from a qualified pension or annuity plan or a tax-sheltered annuity (other than a minimum required distribution) can be rolled over tax free to an IRA or another qualified plan or annuity, unless the distribution is one of a series of substantially equal payments made (1) over the life (or life expectancy) of the participant or the joint lives (or joint life expectancies) of the participant and his or her beneficiary, or (2) over a specified period of 10 years of more. For purposes of the rule denying rollover treatment in the case of certain periodic payments, a single-sum payment that is not substantially equal to the periodic payments that is made before, with, or after the commencement of the periodic payments is not treated as part of the series of periodic payments. For example, if an employee receives 30 percent of his or her accrued benefit in the form of a single-sum distribution upon retirement with the balance payment in annuity form, the amount of the single-sum distribution could be rolled over under the bill.

As under present law, special 5- and 10-year forward income averaging is not available if part of a lump-sum distribution is rolled over. Similarly, if a distribution that is not a lump-sum distribution is rolled over, averaging is not available with respect to a subsequent lump-sum distribution from the plan.

Under the bill, a qualified retirement or annuity plan must permit participants to elect to have any distribution that is eligible for rollover treatment transferred directly to an eligible transferee plan specified by the participant. An eligible transferee plan is an IRA, a qualified annuity plan, or a qualified defined contribution retirement plan. Transfers to a qualified defined benefit plan are not permitted. As under present law, a transfer cannot be made to another qualified plan unless the terms of the transferee plan permit the acceptance of such transfer. Amounts transferred to an eligible transferee plan are includable in income when distributed from the transferee plan in accordance with the rules applicable to that plan. Before making an eligible rollover distribution, the plan administrator is required to provide a written explanation of the direct transfer option. Similar rules apply to eligible rollover distributions from tax-sheltered annuities.

Withholding is imposed at a rate of 20 percent on any distribution that is eligible to be rolled over but that is not transferred directly to an eligible transferee plan. Payees cannot elect to forgo withholding with respect to such distributions.

The bill provides that plan amendments required under the bill do not have to be made before the first plan year beginning on or after January 1, 1994, if the plan is operated in accordance with the bill and the amendment applies retroactively.

Effective Date

The provision is effective for distributions after December 31, 1992.

Subtitle C. Other Provisions

1. Modify Estimated Tax Payment Rules for Large Corporations (sec. 521 of the bill and sec. 6655 of the Code)

Present Law

A Corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning in 1993, 1994, 1995, and 1996, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 95 percent of the tax liability shown on the return for the current taxable year. In addition, a corporation may annualize its taxable income and make estimated tax payments based on 95 percent of the tax liability attributable to such annualized income.

For taxable years beginning in 1992, the 95-percent requirement is a 93-percent requirement; the 95-percent requirement becomes a 90-percent requirement for taxable years beginning in 1997 and thereafter (P.L. 102–244, Feb. 7, 1992).

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of the tax liability shown on its return for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation may use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

Reasons for Change

The committee believes that it is appropriate to require a large corporation to base its estimated tax payments on amounts that

more closely approximate its ultimate tax liability for the year.

Explanation of Provision

For taxable years beginning after June 30, 1992, and before 1997, the bill requires a large corporation to base its estimated tax payments on 96 percent (rather than 93 or 95 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis. For taxable years beginning after 1996, the bill requires a large corporation to base its estimated tax payments on 91 percent (rather than 90 percent) of its current year tax liability.

The bill does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

Effective Date

The provision is effective for taxable years beginning after June 30, 1992.

2. Mark-to-Market Accounting Method for Dealers in Securities (sec. 522 of the bill and new sec. 475 of the Code)

Present Law

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the lower of cost or market value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

For financial accounting purposes, the inventory of securities generally is determined based on market value.

Reasons for Change

Inventories of securities generally are easily valued at year end, and, in fact, are currently valued at market by securities dealers in determining their income for financial statement purposes and in adjusting their inventory using the lower of cost or market method for Federal income tax purposes. The committee believes that the cost method and the lower of cost or market method generally understate the income of securities dealers and that the market method most clearly reflects the income of securities dealers.

Explanation of Provision

In general

The bill provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.[8]

If gain or loss is taken into account with respect to a security be reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss. In addition, the bill authorizes the Treasury Department to promulgate regulations that provide for the application of the second mark-to-market rule at times other than the close of a taxable year or the last business day of a taxable year.

The mark-to-market rules described above apply only for purposes of determining the amount of gain or loss that is taken into account by a dealer in securities for any taxable year. Thus, for example, the mark-to-market rules do not apply in determining the character of any gain or loss and do not begin a new holding period for any security.[9] As a further example, the mark-to-market rules do not apply in determining whether gain or loss is recognized by any other taxpayer that may be a party to a contract with a dealer in securities.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract (but not any other notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in, a security described in (1) through (4) above or any currency, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph. A security, however, is not to include a contract to which section 1256(a) of the Code applies.

A hedge is defined as any position that reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position that is reasonably expected to become a hedge within 60 days after the acquisition of the position.

Exceptions to the mark-to-market rules

Notwithstanding the definition of security, the mark-to-market rules generally do not apply to: (1) any security that is held for investment;[10] (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of a trade or business of the dealer but only if the evidence of indebtedness is not held for sale; (3) any security that is acquired by a floor specialist[11] in connection with the specialist's duties as a specialist on an exchange but only if the security is one in which the specialist is registered with the exchange; (4) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (*i.e.*, any security that is a hedge with respect to (a) security held for investment, (b) an evidence of indebtedness described in (2), or (c) a security of a floor specialist described in (3)); and (5) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.[12]

The exceptions to the mark-to-market rules for certain hedges do not apply to any security that is held by a taxpayer in its capacity as a dealer in securities, except as otherwise provided in regulations to be promulgated by the Treasury Department. Thus, except as otherwise provided in regulations to be promulgated by the Treasury Department, the exceptions to the mark-to-market rules for certain hedges do not apply to (1) any security that is held for sale in the ordinary course of a trade or business, or (2) any security that is entered into with customers in the ordinary course of a trade or business.

In addition, the exceptions to the mark-to-market rules do not apply unless before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations),[13] the security is clearly identified in the dealer's records as being described in one of the exceptions listed above.[14]

It is anticipated that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain dealers in securities use accounting systems which treat certain transactions entered into between separate business units as if such transactions were entered into with unrelated third parties. It is anticipated that for purposes of the mark-to-market rules, such an accounting system generally will provide an adequate identification of hedges with third parties.

In addition to clearly identifying a security as qualifying for one of the exceptions to the mark-to-market rules listed above, a dealer must continue to hold the security in a capacity that qualifies the security for one of the exceptions listed above. If at any time after the close of the day on which the security was acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is not held in a capacity that qualifies the security for one of the exceptions listed above, then the mark-to-market rules are to apply to any changes in value of such security that occur after the security no longer qualifies for an exception.[15]

Improper identification

The bill provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the security does not qualify for that exception, or (2) a dealer fails to identify a position that is not a security as a hedge of a security but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into ac-

count under this provision) with respect to the security or position.

Other rules

The bill provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g) of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply.

In addition, the bill provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be marked-to-market under the bill.

The bill also authorizes the Treasury Department to promulgate regulations which provide for the treatment of a hedge that reduce a dealer's risk of interest rate or price changes or currency fluctuations with respect to securities that are subject to the mark-to-market rules as well as with respect to securities, positions, rights to income, or liabilities that are not subject to the mark-to-market rules. It is anticipated that the Treasury regulations will allow taxpayers to treat any such hedge as not subject to the mark-to-market rules provided that such treatment is consistently followed from year to year.

Finally, the bill authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the bill, including rules to prevent the use of year-end transfers related persons, or other arrangements to avoid the provisions of the bill.

Effective Date

The provision applies to taxable years ending on or after December 31, 1992. A taxpayer that is required to change its method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and as having received the consent of the Treasury Department to make such change.

The net amount of the section 481(a) adjustment is to be taken into account ratably over a 10-taxable year period beginning with the first taxable year ending on or after December 31, 1992, to the extent that such amount does not exceed the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992.

The excess (if any) of (1) the net amount of the section 481(a) adjustment for the first taxable year ending on or after December 31, 1992, over (2) the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992, is to be taken into account ratably over a 4-taxable year period beginning with the first taxable year ending on or after December 31, 1992.

The principles of section 8.03(1) and (2) of Rev. Proc. 92-20, 1992-12 I.R.B. 10, are to apply to the section 481(a) adjustment. It is anticipated that section 8.03(1) of Rev. Proc. 92-20 will be applied by taking into account all securities of a dealer that are subject to the mark-to-market rules (including those securities that are not inventory in the hands of the dealer). In addition, it is anticipated that net operating losses will be allowed to offset the section 481(a) adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the section 481(a) adjustment, and, for purposes of determining liability for estimated taxes, the section 481(a) adjustment will be taken into account ratably throughout the taxable year in question.

In determining the amount of the section 481(a) adjustment for taxable years beginning before the date of enactment of the mark-to-market rules, the identification requirements are to be applied in a reasonable manner. It is anticipated that any security that was identified as being held for investment under section 1236(a) of the Code as of the last day of the taxable year preceding the taxable year of change is to be treated as held for investment for purposes of the mark-to-market rules. It is also anticipated that any other security that was held as of the last day of the taxable year preceding the taxable year of change is to be treated as properly identified if the dealer's records as of such date support such identification.[16]

Finally, no addition to tax is to be made under section 6654 or 6665 of the Code for any underpayment of estimated tax that is due before the date of enactment of the mark-to-market rules to the extent that the underpayment is attributable to the enactment of the mark-to-market rules. The amount of the first required payment of estimated tax that is due on or after the date of enactment of the mark-to-market rules is to be increased by the amount of estimated tax that was not previously paid by reason of the preceding sentence.

3. Tax treatment of certain FSLIC financial assistance (sec. 523 of the bill and secs. 165, 166, 585, and 593 of the Code).

Present Law and Background

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). In the case of a taxpayer on the specific charge-off method of accounting for bad debts, a deduction is allowable for the debt only to the extent that the debt becomes worthless and the taxpayer does not have a reasonable prospect of being reimbursed for the loss. If the taxpayer accounts for bad debts on the reserve method, the worthless portion of a debt is charged against the taxpayer's reserve for bad debts, potentially increasing the taxpayer's deduction for an addition to this reserve.

A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC)[17], and prohibited a reduction in the tax basis of the thrift institution's assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by FIRREA, but still apply to transactions that occurred before May 10, 1989.

Prior to the enactment of FIRREA, the FSLIC entered into a number of assistance agreements in which it agreed to provide loss protection to acquirers of troubled thrift institutions by compensating them for the difference between the book value and sales proceeds of "covered assets." "Covered assets" typically are assets that were classified as nonperforming or troubled at the time of the assisted transaction but could include other assets as well. Many of these covered assets are also subject to yield maintenance guarantees, under which the FSLIC guaranteed the acquirer a minimum return or yield on the value of the assets. The assistance agreements also generally grant the FSLIC the right to purchase covered assets. In addition, many of the assistance agreements permit the FSLIC to order assisted institutions to write down the value of covered assets on their books to fair market value in exchange for a payment in the amount of the write-down.

Under most assistance agreements, one or more Special Reserve Accounts are established and maintained to account for the amount of FSLIC assistance owed by the FSLIC to the acquired entity. The assistance agreements generally specify the precise circumstances under which amounts with respect to covered assets are debited to an account. Under the assistance agreements, these debit entries generally are made subject to prior FSLIC direction or approval. When amounts are so debited, the FSLIC generally becomes obligated to pay the debited balance in the account to the acquirer at such times and subject to such offsets as are specified in the assistance agreement.

In September 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of FIRREA, issued a report to Congress and the Oversight Board of the RTC on certain FSLIC-assisted transactions (the "1988/89 FSLIC transactions"). The report recommended further study of the covered loss and other tax issues relating to these transactions. A March 4, 1991 Treasury Department report ("Treasury report") on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance. The Treasury report states that the Treasury view is expected to be challenged in the courts and recommended that Congress enact clarifying legislation disallowing these deductions.[18]

Reasons for Change

Allowing tax deductions for losses on covered assets that are compensated for by FSLIC assistance gives thrift institutions a perverse incentive to minimize the value of these assets when sold. The FSLIC, and not the institution, bears the economic burden corresponding to any reduction in value because it is required to reimburse the thrift institution for the loss. However, the tax benefit to the thrift institution and its affiliates increases as tax losses are enhanced. The thrift institution, therefore, has an incentive to minimize the value of covered assets in order to maximize its claimed tax loss and the attendant tax savings.

It is desirable to clarify, as of the date of the Treasury Report, that FSLIC assistance with respect to certain losses is taken into account as compensation for purposes of the loss and bad debt deduction provisions of the Code.

Explanation of Provision

General rule

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset shall be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt shall be taken into account for purposes of determining whether such debt is worth-

less (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts. For this purpose, FSLIC assistance means any assistance or right to assistance with respect to a domestic building and loan association (as defined in section 7701(a)(19) of the Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).[19]

Thus, if a taxpayer disposes of an asset entitled to FSLIC assistance, no deduction is allowed under section 165 of the Code for a loss (if any) on the disposition of the asset to the extent the assistance agreement contemplates a right to receive FSLIC assistance with respect to the loss. Similarly, if a loan held by a taxpayer constitutes an asset entitled to FSLIC assistance, the thrift institution shall not charge off any amount of the loan covered by the assistance agreement against the bad debt reserve and no charge-off will be taken into account in computing an addition to the reserve under the experience method, to the extent the assistance agreement contemplates a right to receive FSLIC assistance on a write-down of such asset under the agreement or on a disposition. The institution also shall not be allowed to deduct such amount of the loan under the specific charge-off method.[20]

It is intended that the right to FSLIC assistance for purposes of this provision is to be determined by reference to the gross amount of FSLIC assistance that is contemplated by the assistance agreement with respect to the sale or other disposition, or write-down, without taking into account any offsets that might reduce the net amount FSLIC is obligated to pay under the agreement. For example, under an assistance agreement an institution's right to be reimbursed for a loss on the disposition or write-down of an asset may be reflected as a debit to a Special Reserve Account, while certain other items that will reduce the ultimate amount of assistance to be paid may be reflected as credits to the account. In such a case, the gross amount of FSLIC assistance contemplated by the agreement is the amount represented by the debit, without regard to any offset.

Financial assistance to which the FIRREA amendments apply

The provision does not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference

No inference is intended as to prior law or as to the treatment of any item to which this provision does not apply.

Effective Date

In general

The provision applies to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

For this purpose, financial assistance generally is considered to be credited when the taxpayer makes an approved debit entry to a Special Reserve Account required to be maintained under the assistance agreement to reflect the asset disposition or write-down. An amount will also be considered to be credited prior to March 4, 1991 if the asset was sold, with prior FSLCI approval, before that date.

An amount is not deemed to be credited for purposes of the provision merely because the FSLIC has approved a management or business plan or similar plan with respect to an asset or group of assets, or has otherwise generally approved a value with respect to an asset.

As an example of the application of the effective date provision, assume that a thrift institution is subject to a FSLIC assistance agreement that, through the use of a Special Reserve Account, operates to compensate the institution for the difference between the book and fair market values of certain covered assets upon their disposition or write-down. Further assume that on February 1, 1991 the thrift institution wrote down a covered asset that has a book value and tax basis of $100 to $60, the asset's fair market value. With FSLIC approval, the institution debited the Special Reserve Account prior to March 4, 1991, to reflect the write-down of $40, and properly submitted to the FSLIC a summary of the account that reflected that debit, along with other debits for the quarter ended March 31, 1991. The provision would not apply to a loss claimed by the thrift institution with respect to the write-down of the covered asset on February 1, 1991. The same result would apply if the institution had sold the asset for $60 on February 1 with prior FSLIC approval. In the sale case, the provision would not apply even if there were no debit to the Special Reserve Account prior to March 4, 1991, so long as the FSLIC approved the amount of the reimbursable loss for purposes of providing assistance under the agreement.

Application to certain net operating losses

The provision applies to the determination of any net operating loss [21] carried into a taxable year ending on or after March 4, 1991, to the extent that the net operating loss is attributable to a loss or charge-off for which the taxpayer had a right to FSLIC assistance which had not been credited before March 4, 1991.

For example, assume a calendar year thrift institution is a party to a FSLIC assistance agreement that compensates the institution for the amount that covered loans are written down or charged off pursuant to the agreement. The agreement provides that the institution must receive the prior approval of the FSLIC to write down a loan for purposes of this compensation. Further assume that the institution uses the experience method to account for bad debts for tax purposes, and that in 1990 it charged off $100 with respect to a covered loan. Assume that this charge-off initially reduced the taxpayer's bad debt reserve balance by $100 and allowed the taxpayer to increase its addition to its reserve by $100 to bring the reserve to an appropriate balance. The taxpayer deducted this amount and utilized $20 for the year ended in 1990 (i.e., the last taxable year of the taxpayer ending before March 4, 1991). This produced a net operating loss of $80 for the remainder. The net operating loss is carried forward to 1991 (a taxable year of the taxpayer ending on or after March 4, 1991). Assume that the taxpayer did not debit the Special Reserve Account prior to March 4, 1991. The net operating loss carried to 1991 would be redetermined taking into account the provision. Applying the provision to 1990 would result in disallowing the charge-off of the $100 loan against the experience method reserve, in effect disallowing the $100 addition to the reserve. In such case, the taxpayer would continue to owe no tax for 1990, but the $80 net operating loss would be disallowed. However, the taxpayer's tax liability for 1990 would be redetermined under the provision.

As a further example, assume that the net operating loss described in the example directly above were carried back to, and absorbed in, an earlier year ending prior to March 4, 1991 (rather than being carried forward). In that case, the provision would not apply to reduce the net operating loss carryback.

FOOTNOTES

[1] For this purpose, a personal service corporation is defined as a C corporation the principal activity of which is the performance of services if (1) the services are substantially performed by employee-owners, and (2) more than 10 percent of the stock of the corporation is owned by employee-owners.

[2] The term "applicable amount" generally is defined as any amount paid to an employee-owner that is includable in the gross income of the employee-owner other than any dividend paid by the personal service corporation or any gain from the sale or exchange of property by the employee-owner to the personal service corporation.

[3] As under present law, a taxable year election is also terminated if: (1) the entity becomes part of a proscribed tiered structure; or (2) a partnership or S corporation willfully fails to comply with the required payment rules describe below. In addition, the bill authorizes the Treasury Department to issue regulations which provide for the termination of a taxable year election if the entity does not comply with the annual financial statement requirement described above.

[4] In the case of a new applicable election year that results from a change in the taxable year elected, an additional required payment is required only if the deferral period of the new applicable election year exceeds the deferral period of the former applicable election year.

[5] The Treasury Department is authorized to promulgate regulations that provide for the application of the required payment rules if there is no taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation that precedes the applicable election year. The committee anticipates that these regulations will annualize the results of any short taxable year that is used as the base year.

[6] In the event that there are not 3 taxable years immediately preceding the base year, the provision is to apply based on the number of taxable years immediately preceding the base year.

[7] The Treasury Department is authorized to promulgate regulations that provide for the application of the minimum distribution requirement if there is no preceding taxable year of 12 months (or 52–53 weeks) of the personal service corporation. The committee anticipates that these regulations will annualize the results of any short year that is taken into account for purposes of these rules.

[8] For purposes of this provision, a security is treated as sold to a person that is not related to the dealer even if the security is a contract between the dealer and a related person. Thus, for example, sections 267 and 707(b) of the Code are not to apply to any loss that is required to be taken into account under this provision.

[9] For purposes of determining whether capital gain or loss that is recognized by reason of the mark-to-market rules is short-term or long-term, the holding period is treated as ending on the date that the security is treated as sold under the mark-to-market rules. Thus, for example, if, on August 1, 1992, a calendar year securities dealer acquires a security which is a capital asset subject to the mark-to-market rules, the amount of any gain or loss recognized on December 31, 1992, by reason of the mark-to-market rules would be short-term gain or loss. If such security continues to be held on December 31, 1993, the amount of gain or loss recognized by reason of the mark-to-market rules would be long-term gain or loss.

[10] To the extent provided in regulations to be promulgated by the Treasury Department, the exception to the mark-to-market rules for a security that is held for investment is not to apply to any notional principal contract or any derivative financial instrument that is held by a dealer in such securities.

[11] A floor specialist is defined as a person who (1) is a member of a national securities exchange, (2) is registered as a specialist with the exchange, and (3)

meets the requirements for specialists established by the Securities and Exchange Commission.

[12] For purposes of the mark-to-market rules, debt issued by a taxpayer is not a security in the hands of such taxpayer.

[13] It is anticipated that the Treasury regulations will permit a floor specialist to identify a security as qualifying for an exception before the close of the seventh business day following the day that the security is acquired (see sec. 1236(d)). In addition, it is anticipated that the Treasury regulations will permit a dealer that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as not held for sale based on the accounting practices of the dealer but in no event later than the date that is 60 days after the date that any such evidence of indebtedness is originated. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within a reasonable period after the acquisition of the mortgages but in no event later than the date that is 30 days after the date that the mortgages are acquired.

[14] A security is to be treated as clearly identified in a dealer's records as being described in one of the exceptions listed above if all of securities of the taxpayers that are not so described are clearly identified in the dealer's records as not being described in such exception.

For example, assume that, in the ordinary course of its trade or business, a bank originates loans that are sold if the loans satisfy certain conditions. In addition, assume that (1) the bank determines whether a loan satisfies the conditions within 30 days after the loan is made, and (2) if a loan satisfies the conditions for sale, the bank records the loan in a separate account on the date that the determination is made. For purposes of the bill, the bank is a dealer in securities with respect to the loans that it holds for sale. In addition, by identifying these loans as held for sale, the bank is considered to have identified all other loans as not held for sale. Consequently, the loans that are not held for sale are not subject to the mark-to-market rules.

[15] Any gain or loss that is attributable to the period that the security was not subject to the mark-to-market rules generally is to be taken into account at the time that the security is actually sold (rather than treated as sold by reason of the mark-to-market rules).

[16] In addition, it is anticipated that in order for any security that is held on the date of enactment of the mark-to-market rules, the security must be identified as being described in one of the exceptions within a reasonable period after the date of enactment but in no event later than the date that is 30 days after the date of enactment.

[17] Until it was abolished by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), FSLIC insured the deposits of its member savings and loan associations and was responsible for insolvent member institutions. FIRREA abolished FSLIC and established the FSLIC Resolution Fund (FRF) to assume all of the assets and liabilities of FSLIC (other than those expressly assumed or transferred to the Resolution Trust Corporation (RTC)). FRF is administered by the Federal Deposit Insurance Corporation (FDIC). The term "FSLIC" is used hereafter to refer to FSLIC and any successor to FSLIC.

[18] Department of the Treasury, *Report on Tax Issues Relating to the 1988/89 Federal Savings and Loan Insurance Corporation Assisted Transactions*, March, 1991 at pp. 16–17.

[19] FSLIC assistance for purposes of the provision does not include "net worth assistance". "Net worth assistance" is generally computed at the time of an acquisition, without targeting loss coverage to ultimate dispositions or write-downs with respect to particular assets.

[20] It is expected that, for purposes of the adjusted current earnings adjustment of the corporate alternative minimum tax, there will not be any net positive adjustment to the extent that FSLIC assistance is taken into account as compensation for a loss or in determining worthlessness and there is, therefore, no deductible loss or bad debt charge-off.

[21] For purposes of determining any alternative minimum tax net operating loss carryover to periods ending on or after March 4, 1991 it is expected that the principles described in the preceding footnote will apply.

UNEMPLOYMENT COMPENSATION BENEFITS—COSTS

	Fiscal Year—						
	1992	1993	1994	1995	1996	1997	Total
EUC:							
Benefits	870	2,720	0	0	0	0	3,590
Work Search	20	70	0	0	0	0	90
Eligibility criteria	45	145	0	0	0	0	190
Continued benefits	5	20	0	0	0	0	25
Railroad workers	.....	2	0	0	0	0	2
Administration	30	0	0	0	0	0	30
Extended benefits:							
Optional trigger	0	620	405	230	70	70	1,395
Work search	0	15	10	5	2	2	34
Eligibility criteria	0	35	25	10	5	5	80
Basic program:							
Allow short-time compensation	0	0	0	0	0	0	0
Information on EITC eligibility	0	0	0	0	0	0	0
Information on taxation of benefits	0	.....	.....	.....	.....	.....	.....
Total	970	3,627	440	245	77	77	5,436

ESTIMATED REVENUE EFFECTS OF UNEMPLOYMENT BILL

[Fiscal Years 1992–97, in billions of dollars]

Item and Effective Date	1992	1993	1994	1995	1996	1997	1992–97
Unemployment compensation bill: Unemployment compensation proposal [1]	−0.970	−3.627	−0.440	−0.245	−0.077	−0.077	−5.436
Revenue-raising provisions:							
1. Taxable years of partnerships, etc., tyba Dec. 31, 1991	0.129	0.310	−0.092	−0.192	0.003	0.001	0.160
2. Rollover and withholding on nonperiodic pension distributions, Jan. 1, 1993	.....	2.143	0.001	0.001	0.001	0.001	2.147
3. Increase corporate estimated tax to 96 percent [2]	.....	0.799	−0.174	0.016	0.016	0.048	0.706
4. Mark-to-market for securities dealers,[3] tybo/a Dec. 12, 1992	0.118	0.354	0.482	0.492	0.502	0.512	2.460
Subtotal: Revenue-raising provisions	0.247	3.606	0.217	0.317	0.522	0.562	5.473
Net subtotals	−0.723	−0.021	−0.223	0.072	0.445	0.485	0.037
Prohibit double dipping by thrifts receiving Federal financial assistance,[4] Mar. 3, 1991	0.227	0.115	0.080	0.083	0.004	−0.088	0.421
Grand totals	−0.496	0.094	−0.143	0.155	0.449	0.397	0.458

[1] Estimates for proposal not supplied by Joint Committee on Taxation staff.

[2] Increase rate from 93 percent to 96 percent for taxable years beginning after June 30, 1992; Increase rate from 95 percent to 96 percent for taxable years beginning after Dec. 31, 1992. For taxable years beginning after Dec. 31, 1996, Increase rate from 90 percent to 91 percent.

[3] Estimates for this provision assume rules are implemented to prevent abuse of spread amount.

[4] It is the opinion of CBO that this amount should not appear on a pay-as-you-go scorecard.

Note.—Details may not add to totals due to rounding. Legend for "Effective" column: tyba = taxable years beginning after; tybo/a = taxable years ending on or after.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SEYMOUR:

S. 2847. A bill to authorize a land exchange involving the Cleveland National Forest, California, and a corresponding boundary adjustment for the forest, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. McCAIN:

S. 2848. A bill to authorize the conveyance of certain lands located at Williams Air Force Base, Arizona; to the Committee on Armed Services.

By Mr. MITCHELL (for Mr. KERRY (for himself and Mr. KENNEDY)):

S. 2849. A bill to restore the groundfish resources off the coast of New England, and for other purposes; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SEYMOUR:

S. 2847. A bill to authorize a land exchange involving the Cleveland National Forest, CA, and a corresponding boundary adjustment for the forest, and for other purposes; to the Committee on Energy and Natural Resources.

CLEVELAND NATIONAL FOREST LAND EXCHANGE ACT

• Mr. SEYMOUR. Mr. President. I rise today to introduce legislation that will solve a boundary dispute between the Cleveland National Forest and the Lost Valley Scout Reservation in southern California.

The Lost Valley Scout Reservation, located in a remote area of northern San Diego County and bordered by the Cleveland National Forest, is the principal summer camp for the 80,000 scouts served annually by the Orange County Council of the Boy Scouts of America. The Boy Scouts acquired this property in 1956 through deeds based on an 1880 survey. In the ensuing years, buildings were built on the property in accordance with survey work believed to be accurate at the time.

In 1987, however, the U.S. Forest Service had a portion of the forest/camp boundary surveyed and found that some of the Boy Scout buildings

are located on Forest Service land. Additionally, the Scouts had leased easement rights on an additional parcel of Forest Service property for roads and utility lines. This easement area lies between two activity centers and is heavily impacted by Scout use.

Since the discovery of the boundary error, the U.S. Forest Service district ranger and his staff have worked with the Orange County Council, BSA, to find a solution to the problem. It became apparent through these negotiations that it would be difficult to facilitate an administrative exchange, and it was determined that legislation was needed to authorize a fair exchange of property.

The legislation I am introducing authorizes changing the boundaries of the Cleveland National Forest to accommodate a land swap between the Boy Scouts and the Forest Service. Specifically, the Orange County Council of the Boy Scouts will receive title to a 43-acre parcel that contains scout buildings and easement areas. In exchange, the Forest Service will receive a 94-acre tract of unused forest property currently owned by the Scouts. This proposed solution is considered fair and equitable by the Forest Service and the Boy Scouts. The Orange County Council, BSA, has agreed to have surveys prepared and monuments placed to document the proposed boundaries in compliance with U.S. Forest Service standards.

With this proposed exchange, the Boy Scouts and the Forest Service have reached a fair and neighborly solution to the boundary encroachment problem. I am pleased to note that identical legislation is being introduced in the House of Representatives by Congressman DUNCAN HUNTER, who represents the Cleveland National Forest and Congressman CHRIS COX who represents the Orange County Council of the Boy Scouts. I urge my colleagues to support swift passage of this legislation.●

By Mr. McCAIN:

S. 2848. A bill to authorize the conveyance of certain lands located at Williams Air Force Base, AZ; to the Committee on Armed Services.

CONVEYANCE OF CERTAIN LANDS AT WILLIAMS AIR FORCE BASE

● Mr. McCAIN. Mr. President, following up on a proposal I made in early May in testimony before the Senate Armed Services Subcommittee on Readiness, I am introducing legislation today to authorize a land exchange involving Williams Air Force Base and Arizona State trust lands currently leased by the Department of Defense. It is legislation crucial to the timely disposal and reuse of Williams Air Force Base, and to providing our Nation with effective training and test and evaluation facilities.

This legislation will permit the Federal Government to gain title to 81,121 acres at the Goldwater Gunnery Range, 133 acres at Davis-Monthan AFB, 1,537 acres at Fort Huachuca and 7,563 acres at Yuma Test Station. These are lands which DOD currently leases at a cost of $400,000 a year. In exchange, the State of Arizona will gain land at Williams AFB equal in value to the land acquired by DOD.

My colleagues will note that this language differs from the language that I earlier developed and which was recently incorporated into the House version of the Defense authorization bill in two important respects.

First, after consultation with the Arizona State Land Commission, I have removed language which would make the exchange mandatory. I believe it is important to leave the State's options open in the case it decides not to go through with the land transfer.

Second, the language I am introducing today includes in the transfer roughly 75,000 acres to which the Federal Government owns surface rights, but not mineral rights and includes the mineral rights at Goldwater Gunnery Range. The Air Force currently leases these rights and has expressed an interest in gaining full title. It makes a great deal of sense that the Air Force not have to negotiate at a later date for the subsurface rights at Goldwater. As well, the State will gain that much more value with which to acquire land at Williams.

I am pleased to report that the Air Force has approved in principle the idea of the land exchange. It has also reviewed the legislation and I believe the bill in its current form addresses all of its possible concerns with the transfer.

Although the terms remain to be worked out between State and the Air Force, under consideration for the swap are 600 acres at Williams which have been targeted by the Reuse Advisory Board as an ideal site for a commercial aircraft facility. It is estimated that this land is roughly equal to the trust lands in question.

There are several points I would like to make to put this legislation in context.

First, depending on developments at Williams, the State can decide to acquire portions of Williams other than the 600 acres I previously mentioned. Part of the current reuse plan includes commercial use. The possibility of a commercial aircraft facility locating at Williams has been widely discussed. However, there is nothing in my legislation which interferes with the work of the board or ties them to acquiring any specific parcel of land. There are a great many proposals being discussed for reuse of Williams. My legislation is designed only to authorize this land exchange as a permissible option for base disposal. The final decision of whether to enter into an exchange agreement and the formulation of the terms of such an agreement should remain with the administration and the State of Arizona.

Second, the timely cleanup of Williams continues to be the key to efficient reuse and remains one of my primary concerns. Nothing in this new legislation would interfere with the cleanup or obviate environmental protection, remediation, and restoration laws. It is my hope, however, that consistent with DOD and EPA legal opinion, the land authorized for the swap will be transferred once cleanup is completed on the parcel or parcels under consideration.

Third, I have included a provision which would preserve the State's ability to acquire lands at Williams under the favorable terms outlined in the Defense Base Closure and Realignment Act of 1990. If identified for public use, States can receive surplus property from the Federal Government at up to a 100-percent discount. Given the board's decision to use part of the base for educational/research purposes, these are favorable terms I do not wish to preclude.

Everyone benefits with this legislation. DOD is authorized to acquire land in exchange for properties at Williams. Because of the decision last year to close Williams, these are lands it needs to dispose of anyway. DOD also obtains lands which potentially can provide the services with valuable range space necessary to fulfill its long-term needs.

The State wins because it gains the title to land which it might otherwise have to purchase.

The communities surrounding Williams will benefit the most. They will be one step further in adjusting to life without Williams. The State will gain title to lands which can immediately and specifically be considered in attracting industry to the east valley.

Timeliness of the transfer of Williams remains the key to a painless adjustment in the east valley. It is my hope that this legislation will help us get the process well underway.

I ask unanimous consent that the bill be printed in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2848

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LAND CONVEYANCE, WILLIAMS AIR FORCE BASE, ARIZONA.

(a) IN GENERAL.—(1) The United States may acquire by condemnation or otherwise—

(A) all right, title, and interest of the State of Arizona (including any mineral rights) in and to the trust lands of the State of Arizona described in paragraph (2); and

(B) any mineral right or interest of the State of Arizona in and to the trust lands of the State of Arizona described in paragraph (3).

(2) The trust lands referred to in paragraph (1)(A) are as follows:

(A) A parcel consisting of approximately 81,121 acres located in the Goldwater Aerial Gunnery Range, Yuma County and Maricopa County, Arizona, and used by the Air Force for activities relating to aerial gunnery and bombing practice.

(B) A parcel consisting of approximately 7,563 acres located in the Yuma Test Station, Yuma County, Arizona, and used by the Army for activities relating to field artillery testing.

(C) A parcel consisting of approximately 1,537 acres located in the Fort Huachuca East Range, Cochise County, Arizona, and used by the Army for activities relating to field training exercises.

(D) A parcel consisting of approximately 133 acres located in Davis-Monthan Air Force Base, Tucson, Arizona.

(3) The trust lands referred to in paragraph (1)(B) are as follows:

(A) A parcel consisting of approximately 50,355 acres located in the Goldwater Aerial Gunnery Range, Arizona.

(B) A parcel consisting of approximately 12,781 acres located in the Yuma Test Station, Arizona.

(C) A parcel consisting of approximately 12,905 acres located in the Fort Huachuca East Range, Arizona.

(b) CONSIDERATION.—As consideration for the acquisition by the United States of Arizona trust lands under paragraph (1)(A) of subsection (a) and any mineral rights under paragraph (1)(B) of that subsection, the Secretary of the Air Force shall convey to the State of Arizona all right, title, and interest of the United States in and to a parcel of real property located at Williams Air Force Base, Arizona, together with any improvements thereon, that is approximately equal in fair market value to the fair market value of the property and mineral rights acquired under that subsection.

(c) CONDITIONS.—The Secretary of the Air Force may make the conveyance described in subsection (b) only if—

(1) the fair market value of the real property and mineral rights acquired by the United States under subsection (a) is at least equal to the fair market value of the property conveyed by the Secretary of the Air Force under subsection (b); and

(2) the conveyance of the Secretary of the Air Force to the State of Arizona under subsection (b) is accepted as full consideration for the conveyance of property and mineral rights to the United States under subsection (a) and terminates all right, title, and interest of all parties other than the United States in and to the property and mineral rights conveyed to the United States under subsection (a); and

(3) the Secretary of the Air Force has complied with all environmental protection, remediation, and restoration laws that are applicable to the disposal of Williams Air Force Base, Arizona.

(d) LIMITATION ON CONVEYANCE AUTHORITY.—The conveyance of real property described in subsection (b) may not be made until adequate prior opportunity has been provided for the disposition of such property under the provisions of law to which the disposition of excess and surplus property is subject under section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687), except the requirement of disposition by public advertising.

(e) DETERMINATIONS OF FAIR MARKET VALUE.—The Secretary of the Air Force shall determine the fair market value of the parcels of real property to be acquired pursuant to subsection (a)(1)(A), the mineral rights to be acquired pursuant to subsection (a)(1)(B), and the parcel of real property to be conveyed pursuant to subsection (b). Such determinations shall be final.

(f) DESCRIPTIONS OF PROPERTY.—The exact acreages and legal descriptions of the parcels of real property to be acquired pursuant to subsection (a)(1)(A), the parcels of real property referred to in subsection (a)(1)(B), and the parcels of real property conveyed pursuant to subsection (b) shall be determined by surveys that are satisfactory to the Secretary of the Air Force. The cost of such surveys shall be borne by the State of Arizona.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Air Force may require any additional terms and conditions in connection with the conveyance and acquisitions under this section that the Secretary determines appropriate to protect the interests of the United States.•

By Mr. MITCHELL (for Mr. KERRY, for himself, and Mr. KENNEDY):

S. 2849. A bill to restore the groundfish resources off the coast of New England, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NEW ENGLAND GROUNDFISH RESTORATION ACT

• Mr. KERRY. Mr. President, I am today introducing legislation to help the hard-pressed New England fishing industry rebuild depleted groundfish stocks.

The goal of the bill is to help restore cod, haddock, and flounder to past levels of abundance and thereby generate thousands of jobs and billions of dollars in revenues for New England's fishermen and coastal communities. Because of the disastrous condition of those stocks today, this is a process that may ultimately take a decade or more. The new bill is designed to minimize short-term harm to the industry while the rebuilding process is underway.

If enacted, the bill would require the New England Regional Fisheries Management Council to develop a plan by December 15 for rebuilding principal New England groundfish stocks over the next 7 to 10 years. A fisheries reinvestment program is created to enable some fishermen to switch to more abundant, but less-utilized fish species during the rebuilding process. The bill also includes provisions to strengthen fisheries enforcement and to encourage negotiations with Canada to conserve shared-fisheries stocks.

The legislation has been made necessary by the well-documented decline in the major commercial groundfish species in New England waters over the past decade. The years of revival following enactment of the Magnuson Fisheries Conservation and Management Act—Magnuson Act—in 1975 have given way to too many years of too many boats chasing too few fish. The result is a serious depletion of cod and flounder stocks and the virtual destruction of haddock. Annual commercial landings of groundfish have declined from 750,000 metric tons in 1965 to roughly 175,000 today, despite the existence of a larger and far more sophisticated New England fishing fleet. For centuries, Georges Bank has provided fishermen from Nova Scotia to Point Judith with some of the richest fishing grounds in the world; but today, the bank is ruled by dogfish and skate.

Under the circumstances, it is essential that all of us who are concerned about the fate of the commercial fishing industry focus our attention not so much on how we got to where we are, but in how we get back to where we need to go. The New England fishing industry is a billion dollar contributor to our economy; it is the economic heart and soul of coastal communities like Gloucester and New Bedford; and it stands as a symbol of our identity as a maritime nation. We all have a stake in seeing it survive and prosper once again.

If we are to achieve that goal, we must plan not simply to maintain the status quo, but to rebuild the stocks that have been depleted. We must have a plan to reduce fishing effort that the majority of the industry will understand and support; a plan that is enforceable; that is based on the best science available; and that will produce measurable progress and results.

If all this were easy to do it would have been done long ago. The fact is that fisheries management is one of the toughest jobs there is. It depends on scientific information which is almost always incomplete. It is based on projected impacts that are almost always subject to challenge. It must pick from a variety of management options that are almost always unproven. And it must devise methods for regulating fishing effort that will almost always be perceived, at least by some, as unfair.

All of these difficulties are illustrated by the current controversy over the proper approach to managing the fishery. Last June, the Conservation Law Foundation [CLF] and the Massachusetts Audubon Society filed suit against the Department of Commerce for failure to prevent overfishing as required by the Magnuson Act. In August, the suit was settled by a consent decree between the plaintiffs and the National Marine Fisheries Service. The decree required a rebuilding program to eliminate the overfished condition of cod and yellowtail flounder stocks within 5 years and of haddock stocks within 10 years. It also required that a groundfish plan capable of achieving these goals be drafted by the council by March 1, 1992, and made final by September 1.

In response, the council proposed a new amendment No. 5 to the New England Groundfish Management plan. The amendment, which relies on a wide variety of measures to reduce fishing effort and protect young and undersized fish, has been criticized by commercial

fishermen from Maine to Rhode Island and beyond; 500 fishermen showed up at a hearing in the New Bedford area to protest; 450 showed up in Gloucester. Hundreds more in Maine and Rhode Island. Those are not unusual numbers; they are unbelievable numbers. Fisherman after fisherman told the council that the proposed amendment was unworkable, overly bureaucratic, and that it would put them out of business.

The question for Congress at this point is whether legislative action is needed to give the council and the industry time beyond the September 1 date in the consent decree to develop a workable plan for rebuilding the fisheries. At a hearing before the national ocean policy study on June 3, industry representatives argued that more time was essential. The CLF, on the other hand, urged that Congress do nothing that would ease the pressure on all parties to design and implement a strong conservation plan.

The legal picture was altered again on June 11, when the U.S. Court of Appeals for the first circuit found in favor of seven commercial fishing groups that were refused the right to intervene in the CLF litigation and subsequent consent decree. The decision vacates the ruling denying intervention and returns the matter to district court.

The New England Groundfish Restoration Act is based on several premises. First, that rebuilding the groundfish stocks is absolutely essential to the future of the commercial fishing industry in New England and that prolonged delays or ineffective management plans cannot be tolerated.

Second, that the responsibility for developing a management plan should remain with the council. For all its faults, the council system set out in the Magnuson Act remains the best method for melding the often competing concerns of science, law enforcement, and industry.

And third, the timetable set out in last August's consent decree is unrealistically short. As the furor over proposed amendment No. 5 has demonstrated, developing an effective and enforceable groundfish rebuilding plan will not be easy. The New England Groundfish Restoration Act extends until December 15 the deadline for developing a draft plan and extends from 5 until 7 years the target for ending overfishing for cod and yellowtail flounder. The target for haddock, as in the consent decree, remains at 10 years.

By overturning the consent decree, the bill allows the council an added measure of flexibility, but it does not, in any way, relieve it or the industry of the need to act and act soon. Fishermen know better than anyone how important it is that the bread and butter fisheries of Georges Bank be restored to health. Industry representatives from throughout the region have been working hard in recent weeks to identify the best and fairest means of reducing fishing effort, and improving fisheries management. Differences of philosophy, geography, and interest continue to separate various segments of the industry on key questions. But the determination to work things out and get the fishery back on track is universal. The New England Groundfish Restoration Act will give the industry an opportunity to fire its best shot.

The New England Groundfish Restoration Act includes a new section 9, not included in the House or Representatives version of the bill, establishing a Fisheries Reinvestment Fund. This section was developed in response to testimony received by the national ocean policy study from the Cape Ann Vessel Association of Gloucester. The fund, authorized at $5 million per year, would be available for research and development projects directed at rebuilding, revitalizing, and diversifying fisheries resources in the United States. Eligible projects include efforts to develop and marketfish and fish products from underutilized species, to improve the processing and use of fish waste; and to restore overfished stocks through spawning or hatchery programs.

Other major provisions of the bill include those that would strengthen fisheries enforcement through cooperative agreements with State enforcement agents, the creation of a Coast Guard enforcement working group, and mandatory sanctions for certain regulatory violations. Section 5 encourages the Secretary of State to seek cooperative groundfish management policies with Canada. Section 7 establishes a research program for developing fishing gear that would enhance conservation efforts for New England groundfish and explore the possibility of groundfish hatcheries and shore-based production facilities.

I hope and expect that favorable action on this bill will be taken by the Senate Commerce Committee and that similar legislation, sponsored by Democrat GERRY STUDDS, will move forward in the House of Representatives.

Given the uncertain legal situation, and the ongoing discussions involving the council and industry about the components of a fisheries rebuilding program, the need for legislative action could diminish. If we take no action now, however, we may lose the option of acting at all. I do not want the New England fishing industry dependent on our ability to introduce and approve legislation during the hectic final days of this Congress. Instead, I believe we should move ahead with the legislation while continuing to monitor events in New England closely and with the understanding that modifications in the bill may be required to accommodate changing circumstances. In addition, I stand ready at any time to discuss—with fishing industry representatives and others—any proposals they may have for improving the proposed bill.

I want to thank Representatives GERRY STUDDS and NICK MAVROULES and my colleague, TED KENNEDY, for their role in developing this legislation.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2849

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "New England Groundfish Restoration Act".

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) ensure the timely recovery of depressed stocks of New England groundfish, the long-term stability of major New England groundfish stocks, and the consequent long-term viability of the New England fishing industry;

(2) meet the objectives of the Magnuson Fishery Conservation and Management Act by requiring implementation of conservation and management measures to eliminate overfishing and achieve optimum yields from the multispecies fishery in the northwest Atlantic Ocean;

(3) establish clear lines of accountability between the New England Fishery Management Council and the Secretary of Commerce in developing a program to rebuild stocks of cod and yellowtail flounder within 7 years and stocks of haddock within 10 years;

(4) encourage the full enforcement of New England fishery management plans by authorizing the reimbursement of appropriate State agencies for expenses incurred in enforcing those plans;

(5) encourage negotiations with the Government of Canada for the purpose of improving the conservation of transboundary stocks of groundfish in the northwest Atlantic Ocean;

(6) redirect surplus fishing effort in the New England groundfish fishery through the development of commercial fisheries and markets for currently underutilized species of fish of the northwest Atlantic Ocean;

(7) require research into conservation gear engineering and technology in order to develop more selective fishing gear for New England groundfish; and

(8) require research into New England groundfish hatcheries and other shorebased fish production facilities.

SEC. 3. NEW ENGLAND GROUNDFISH RESTORATION PROGRAM.

(a) IN GENERAL.—Section 312 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857 note) is amended to read as follows:

"SEC. 312. NEW ENGLAND GROUNDFISH RESTORATION PROGRAM.

"(a) AMENDMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

"(1) PREPARATION BY COUNCIL.—

"(A) IN GENERAL.—Not later than December 15, 1992, or such later date as the Sec-

retary determines is appropriate for effective conservation and management, the New England Fishery Management Council (hereafter in this section referred to as the 'Council') shall prepare and submit to the Secretary an amendment to the Northeast Multispecies Fishery Management Plan that establishes conservation and management measures for New England groundfish designed to reduce fishing mortality to the extent necessary to eliminate overfishing and achieve optimum yield of cod and yellowtail flounder stocks not later than 7 years after the effective date of the amendment, and of haddock stocks not later than 10 years after that effective date.

"(B) RECOMMENDATION FOR SCHEDULE OF CIVIL PENALTIES.—The Council shall submit to the Secretary with an amendment submitted under this paragraph a recommendation for a schedule of civil penalties for purposes of subsection (b), including a list of violations for which fishing permit sanctions shall be proposed under section 308(g).

"(C) REVIEW BY SECRETARY.—The Secretary shall give the review of an amendment submitted under this paragraph such priority consideration as may be necessary to ensure that, if approved, it will be implemented as soon as possible.

"(2) PREPARATION BY SECRETARY.—

"(A) IN GENERAL.—If the Council does not submit to the Secretary an amendment to the Plan in accordance with paragraph (1), the Secretary shall make a determination under section 304(c)(1)(A) that the Council failed to act within a reasonable period of time, and not later than 3 months after making such determination, the Secretary shall prepare such an amendment and issue such regulations as necessary to implement the amendment.

"(B) PROCEDURE.—In preparing an amendment under this subsection, the Secretary shall—

"(i) comply with the procedures established under section 304(c) for the preparation of amendments to fishery management plans by the Secretary;

"(ii) conduct public hearings on the amendment; and

"(iii) consult with representatives of the commercial and recreational fishing industries.

"(3) CONTENTS OF THE AMENDMENT.—

"(A) AUTHORITY TO SUSPEND FISHING UPON COUNCIL REQUEST.—In addition to meeting the requirements of section 303(a), the amendment prepared under this subsection shall provide for the immediate suspension of fishing, within 5 days after receipt of a request from the Council, in—

"(i) areas where New England groundfish are spawning; and

"(ii) areas where there are high concentrations of undersized New England groundfish.

"(B) NOTIFICATION REQUIREMENTS.—If the amendment prepared under this subsection establishes a moratorium on the issuance of new permits authorizing participation in the New England groundfish fishery, such amendment shall—

"(i) include a list of vessels that are eligible to participate in the fishery;

"(ii) require the Council to notify each owner of a vessel that is authorized to participate in the fishery in 1992 and whose participation may be precluded by such moratorium; and

"(iii) provide for an appeal process, including an opportunity for a hearing.

"(b) SCHEDULE OF CIVIL PENALTIES.—

"(1) IN GENERAL.—Simultaneously with the issuance of regulations implementing a Plan amendment prepared under this section, the Secretary shall issue a schedule of civil penalties which shall apply under section 308 for violations of this Act relating to the New England groundfish fishery.

"(2) CONTENT.—A schedule issued by the Secretary under paragraph (1) shall—

"(A) be based on the recommendation submitted by the Council under subsection (a)(1)(B); and

"(B) specify violations of the Act for which permit sanctions under section 308(g) shall be proposed.

"(3) EXPLANATION OF FAILURE TO ADOPT RECOMMENDATION OF COUNCIL.—The Secretary shall publish in the Federal Register a statement explaining why any part of the recommendation submitted by the Council under subsection (a)(1)(B) is not included in the schedule issued under this subsection.

"(c) STATE CONSERVATION AND MANAGEMENT MEASURES.—The Secretary—

"(1) shall, not later than 1 year after the effective date of the regulations implementing any amendment to the Plan prepared under this section, review the actions taken by each State represented on the Council to implement the amendment in the waters of such State (other than internal waters); and

"(2) may regulate fishing within the boundaries of such State only if the Secretary complies with section 306(b).

"(1) NEW ENGLAND GROUNDFISH.—The term 'New England groundfish' means any member of a species of cod, flounder, haddock, pollock, hake, or other fish managed under the Plan.

"(2) OVERFISHING.—The term 'overfishing' has the meaning the term has in the Plan (as amended pursuant to subsection (a)).

"(3) PLAN.—The term 'Plan' means the Northeast Multispecies Fishery Management Plan approved by the Secretary in accordance with this Act, as in effect on the date of the enactment of the New England Groundfish Restoration Act.".

(b) RELATED MATTERS.—Section 305(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1855(e)) is amended—

(1) by striking "subsection (c) or" and inserting in lieu thereof "subsection (a),"; and

(2) by inserting ", or section 312," immediately after "section 304 (a) and (b)".

(c) EFFECT OF AMENDMENTS ON EXISTING ACTIONS.—Except as may be required pursuant to the amendments made by this section—

(1) the New England Fishery Management Council shall not be required to approve under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) a rebuilding program for New England groundfish;

(2) the Secretary of Commerce shall not be required to take any action under that Act to prepare a program for the rebuilding of cod, yellowtail flounder, and haddock stocks in the northwest Atlantic Ocean; and

(3) the New England Fishery Management Council and the Secretary of Commerce shall not be required to perform any other act pursuant to their functions under that Act,

based upon any failure, before the date of the enactment of this Act, of the New England Fishery Management Council or the Secretary of Commerce to perform their functions under that Act.

(d) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by striking the item relating to section 312 and inserting in lieu thereof the following:

"Sec. 312. New England groundfish restoration program.".

SEC. 4. ENFORCEMENT.

Section 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting immediately after subsection (e) the following new subsection:

"(f) ENFORCEMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

"(1) ENFORCEMENT AGREEMENTS.—Not later than 12 months after the date of enactment of the New England Groundfish Restoration Act, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a), with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

"(2) REIMBURSEMENT.—An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

"(3) COAST GUARD ENFORCEMENT WORKING GROUP.—

"(A) ESTABLISHMENT.—The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

"(B) MEMBERSHIP.—The working group shall consist of members selected by the Commander, and shall include—

"(i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;

"(ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and

"(iii) other individuals the Commander considers appropriate.

"(C) NON-FEDERAL STATUS OF WORKING GROUP MEMBERS.—An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

"(D) MEETINGS.—The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

"(4) USE OF FINES AND PENALTIES.—Amounts available to the Secretary under this Act which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.".

SEC. 5. UNITED STATES-CANADA FISHERY MANAGEMENT AGREEMENT.

(a) NEGOTIATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of State, in consultation with the Secretary of Commerce, is authorized and encouraged to initiate negotiations with the Government of Canada for the purpose of entering into an international fishery agreement with Canada for the conservation and management of fisheries of mutual concern in the northwest Atlantic Ocean, with par-

ticular emphasis on transboundary stocks of groundfish and ensuring the success of New England groundfish restoration efforts pursuant to this Act.

(b) CONTENTS OF AGREEMENT.—An agreement entered into pursuant to this section shall—

(1) provide for timely and periodic exchanges of scientific information relating to the conservation and management of fisheries stocks of mutual concern;

(2) provide for routine meetings between the officials of the United States and Canada responsible for the conservation and management of fisheries;

(3) establish procedures for the identification of conservation and management measures that would be mutually beneficial; and

(4) identify procedures for the implementation within each country of conservation and management measures identified as mutually beneficial.

(c) CONSULTATION COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary of State, in consultation with the Secretary of Commerce, shall establish a consultative committee to assist in the development and implementation of a fishery agreement pursuant to this section.

(2) MEMBERSHIP.—The membership of the Committee shall include representatives from the New England Fishery Management Council, the States represented on that Council, the Atlantic States Marine Fisheries Commission, the fishing industry, the seafood processing industry, and others knowledgeable and experienced in the conservation and management of fisheries.

(d) APPLICATION OF EXISTING LAW.—An agreement entered into pursuant to this section shall be subject to section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823).

(e) LETTER.—Not later than 1 year after the date of enactment of this Act, and annually thereafter until the effective date of an agreement entered into pursuant to this section, the Secretary of State shall transmit to the Congress a letter describing activities of the Secretary under this section.

SEC. 6. DEVELOPMENT OF FISHERIES FOR UNDERUTILIZED SPECIES OF NORTHWEST ATLANTIC OCEAN.

(a) PROGRAM.—Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

"SEC. 314. DEVELOPMENT OF FISHERIES FOR UNDERUTILIZED SPECIES OF NORTHWEST ATLANTIC OCEAN.

"(a) PROGRAM.—

"(1) IN GENERAL.—Not later than 12 months after the date of enactment of the New England Groundfish Restoration Act, the Secretary shall establish a program for the purpose of—

"(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

"(B) developing alternative fishing opportunities for participants in the New England groundfish fishery; and

"(C) providing technical support and assistance to United States fishermen and fish processors to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable.

"(2) ACTIVITIES UNDER PROGRAM.—As part of a program under this section the Secretary may, subject to the availability of appropriations, award contracts, grants, and other financial assistance to—

"(A) persons who own or operate fishing vessels permitted under this Act to participate in the New England groundfish fishery, for activities which promote the purposes described in paragraph (1);

"(B) United States fish processors, for activities which make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable for United States fishermen; and

"(C) citizens of the United States for the administration and management of the program.

"(3) CONDITION FOR PARTICIPATION.—As a condition of receiving any contract, grant, or other financial assistance under a program under this subsection, the Secretary shall require a person who owns or operates any fishing vessel permitted under this Act to participate in the New England groundfish fishery to temporarily surrender that permit to the Secretary during the duration of the contract, grant, or other assistance.

"(b) FISHERIES RESEARCH AND DEVELOPMENT PROJECTS.—The Secretary shall use amounts available to the Secretary under section 9 or the New England Groundfish Restoration Act or section 2 of the Act of August 11, 1939 (15 U.S.C. 713c-3; commonly referred to as the 'Saltonstall-Kennedy Act'), to fund grants for projects that promote development of fisheries for underutilized species of the northwest Atlantic Ocean.

"(c) ASSISTANCE OF OTHER AGENCIES.—The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

"(d) MANAGEMENT PLANS FOR UNDERUTILIZED SPECIES.—The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean that is not covered under such a plan, in order to prevent overfishing of that species.

"(e) UNDERUTILIZED SPECIES DEFINED.—For purposes of this section, the term 'underutilized species of the northwest Atlantic Ocean' means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the item relating to section 313 the following new item:

"Sec. 314. Development of fisheries for underutilized species of northwest Atlantic Ocean.".

SEC. 7. NEW ENGLAND GROUNDFISH FISHERIES RESEARCH.

(a) AMENDMENT TO NATIONAL FISHERIES RESEARCH PLAN.—Section 304(e)(1) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)(1)) is amended in the first sentence by inserting immediately after "publication" the following: ", and specifically for the restoration of stocks of New England groundfish (as that term is defined in section 312)".

(b) NEW ENGLAND FISHERIES RESEARCH PROGRAM.—Section 304(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) is amended by adding at the end the following:

"(4) Within 9 months of the date of enactment of the New England Groundfish Restoration Act, the Secretary shall establish a research program at the Northeast Fisheries and Science Center of the National Marine Fisheries Service. The program shall include—

"(A) research into conservation gear engineering and technology in order to develop more selective fishing gear for New England groundfish;

"(B) research into New England groundfish hatcheries and other shore-based fish production facilities; and

"(C) other appropriate activities.".

SEC. 8. REQUIREMENT TO PROVIDE LEGAL ADVICE.

Section 302(f) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852(f)) is amended by adding at the end the following:

"(8) Not later than 30 days after receiving the request, the Secretary (acting through the General Counsel of the National Oceanic and Atmospheric Administration) shall provide a detailed response to any written request from a Council for legal advice regarding whether a management measure or other regulation is consistent with this Act.".

SEC. 9. FISHERIES REINVESTMENT FUND.

(a) ESTABLISHMENT OF THE FUND.—There is established in the Treasury of the United States a Fisheries Reinvestment Fund (hereafter in this section referred to as the "Fund"). The Fund shall be available, without fiscal year limitation, for research and development projects directed at rebuilding, revitalizing, and diversifying fisheries upon which coastal communities depend to meet social and economic needs.

(b) DEPOSITS AND INVESTMENTS.—(1) There shall be deposited in the Fund—

(A) moneys provided to the Fund under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b); commonly referred to as the "Saltonstall-Kennedy Act");

(B) payments made pursuant to this subsection; and

(C) receipts from interest-bearing accounts or investments made under this subsection.

(2) Any person may make voluntary payments to the Fund to assist in carrying out the purposes of this section.

(3) Sums in the Fund that are not currently needed for the purpose of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury, or invested in obligations of, or guaranteed by, the United States.

(c) ELIGIBLE PROJECTS.—In selecting projects for funding under this section, priority shall be given to those projects that increase the effectiveness of a program to rebuild a stock of fish that has been subject to overfishing or address economic, social, or ecological issues relating to implementing such a program. Eligible projects may include efforts to—

(1) develop and market new underutilized species products;

(2) improved processing and utilization of fish waste; and

(3) restore overfished stocks through aquaculture or hatchery programs.

(d) ADVISORY PANEL.—(1) There is established an advisory panel of seven members (hereafter referred to in this section as the "Panel"). The Panel shall be appointed by the Secretary and shall consist of—

(A) four members representing the commercial fishing and seafood processing industry; and

(B) three members who represent qualified academic organizations, such as participants in the National Sea Grant College Program.

(2) The Secretary shall designate a chairman of the Panel from among its members.

(3) The Panel shall develop priorities for the program and review and make recommendations regarding projects to be selected for funding.

(e) GRANTS.—The Secretary shall make grants from the Fund to support projects under this section, under the terms and conditions provided in section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713c-3(c); commonly referred to as the "Saltonstall-Kennedy Act").

(f) AMENDMENTS TO THE SALTONSTALL-KENNEDY ACT.—(1) Section 2(b)(1) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)); commonly referred to as the "Saltonstall-Kennedy Act//), is amended—

(A) by striking "and" at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(C) by adding at the end the following new subparagraph:

"(C) the provision of moneys, subject to paragraph (3), to carry out the purposes of the Fisheries Reinvestment Fund established under section 10 of the New England Groundfish Restoration Act.".

(2) Section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)), is amended by adding at the end the following new paragraph:

"(3) There are authorized to be transferred from the fund established under paragraph (1) to the Fisheries Reinvestment Fund referred to in paragraph (1)(C) $5,000,000 in each of the fiscal years 1993 through 1997.".

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section establishes the short title of the bill as the "New England Groundfish Restoration Act."

SECTION 2. PURPOSES

This section describes the purposes of the bill, which are to: (1) ensure the recovery and long-term stability of the New England groundfish fishery; (2) develop a stock rebuilding program and reestablish clear lines of accountability between the New England Regional Fishery Management Council (Council) and the Secretary of Commerce (Secretary); (3) encourage more effective fishery enforcement; (4) improve international conservation of transboundary groundfish stocks; (5) redirect current fishing effort onto underutilized species of fish; and (6) require research into conservation-oriented gear development and restocking programs.

SECTION 3. NEW ENGLAND GROUNDFISH RESTORATION PROGRAM

Section 3 amends the Magnuson Fishery Conservation and Management Act (Magnuson Act) to add a new section 312 providing for restoration of New England groundfish stocks. Subsection (a) would set a December 15, 1992, deadline (unless modified by the Secretary) for Council preparation of an amendment to the Fishery Management Plan for the Northeast Multispecies Fishery (Groundfish Plan). The amendment would be subject to review by the Secretary and would contain a stock rebuilding plan to eliminate overfishing and achieve the optimum yield of cod and yellowtail flounder within 7 years and of haddock within 10 years. The Council also would be required to recommend a penalty schedule, including permit sanctions, for violations.

Failure by the Council to submit a rebuilding plan would trigger preparation of an amendment by the Secretary, to be completed within three months. In preparing such an amendment, the Secretary would be required to comply with the existing Magnuson Act procedures, conduct public hearings, and consult with the fishing industry.

The Groundfish Plan amendment would be required to provide for immediate suspension of fishing in spawning and small fish areas. If a moratorium is called for, the amendment also would have to provide for notification of affected fishermen and a Council appeal process. Review by the Secretary of state actions to implement the amendment in state waters would be required within one year. Finally, new section 312 of the Magnuson Act would include definitions for "New England groundfish", "overfishing", and the "Plan".

In addition, this section of the bill would override the consent decree between the Conservation Law Foundation and the Secretary. Neither the Council nor the Secretary would be required to develop a program to rebuild New England groundfish stocks except as provided for in this section.

SECTION 4. ENFORCEMENT

This section amends section 311 of the Magnuson Act to require the Secretary, if requested by a New England governor, to enter into a cooperative federal-state agreement to enforce the Groundfish Plan. A state with such an agreement would be eligible for reimbursement of costs incurred in the detection and prosecution of violations. This section also requires the Coast Guard to establish an informal fisheries enforcement working group, comprised of fishing industry representatives, in order to improve overall compliance with fisheries regulations. Lastly, this section would require that the fines collected for violations of the Groundfish Plan be used by the Secretary to enforce it.

SECTION 5. UNITED STATES-CANADA FISHERY MANAGEMENT AGREEMENT

Under this section, Secretary of State, in consultation with the Secretary, is authorized and encouraged to initiate negotiations with Canada. The goal of such negotiations would be a bilateral agreement for the conservation and management of fisheries of mutual concern, particularly transboundary groundfish stocks. The agreement would provide for a timely and periodic exchange of scientific and management information, and would establish procedures to identify and implement regulatory measures that would benefit joint management efforts. This section also would establish a consultative committee consisting of representatives from the Council, states, the Atlantic States Marine Fishery Commission, and the fishing industry to assist the Secretary of State in developing the agreement. Any agreement reached under this section would be subject to the requirements governing international fishing agreements found in section 302 of the Magnuson Act. Finally, the Secretary of State would be required to transmit each year a letter to Congress on activities pursued under this section.

SECTION 6. DEVELOPMENT OF FISHERIES FOR UNDERUTILIZED SPECIES OF NORTHWEST ATLANTIC OCEAN

This section adds a new section 314 to the Magnuson Act, mandating that the Secretary initiate an aggressive program for the development of fisheries for underutilized species of the northwest Atlantic. The program would provide for: (1) promotion of commercial fisheries and markets for underutilized species; (2) development of alternative fishing opportunities for new England groundfish fishermen; and (3) technical support and assistance to U.S. fishermen and processors to make participation in a fishery for underutilized species economically viable. Under the program, the Secretary would be authorized to provide financial assistance to fishermen and processors for related activities. While participating in the program, groundfish permit holders would be required to surrender temporarily their permits to the Secretary. Funding for the program would be available from the Saltonstall-Kennedy fund and the Fisheries Reinvestment Fund established under section 9 of the legislation. In addition, the Secretary would be required to work with other federal agencies to make underutilized species eligible for programs such as the Department of Agriculture's Food for Peace. Finally, this section directs the Council to develop a management plan for any underutilized species that is not already covered under such a plan.

SECTION 7. NEW ENGLAND GROUNDFISH FISHERIES RESEARCH

This section amends section 304(e) of the Magnuson Act to require the Secretary to consider the restoration of New England groundfish stocks in developing a strategic plan for fisheries research. This section also mandates research on methods to conserve and rebuild groundfish stocks, including conservation gear engineering and hatchery and aquaculture production.

SECTION 8. REQUIREMENT TO PROVIDE LEGAL ADVICE

This section amends section 302 of the Magnuson Act to require the General Counsel of the National Oceanic and Atmospheric Administration to provide timely legal advice to a regional fishery management council when requested in writing to do so.

SECTION 9. FISHERIES REINVESTMENT FUND

This section would establish, in the Treasury of the United States, a Fisheries Reinvestment Fund (Fund) for research and development projects directed at rebuilding, revitalizing, and diversifying fisheries upon which coastal communities depend to meet social and economic needs. Deposits to the Fund would come from transfers from the Saltonstall-Kennedy fund, voluntary payments, and receipts from Fund interest-bearing accounts or investments. The Fund would be used to support projects that increase the effectiveness of a program to rebuild a stock of fish which has been subject to overfishing or address economic, social, or ecological issues related to the implementation of such a program. Program priorities and funding recommendations would be developed by a seven-member panel comprised of four members representing the commercial fishing and processing industry and three members representing academic organizations. Grants from the Fund would be made to support projects under the terms and conditions of the Saltonstall-Kennedy Act. This section also would amend the Saltonstall-Kennedy Act to authorize the annual transfer of $5,000,000 for fiscal years 1993-1997 to the Fund.●

● Mr. KENNEDY. Mr. President, I rise to voice my support for the New England Groundfish Restoration Act that is being introduced today. I commend my colleague from Massachusetts, Senator KERRY, and the chairman of the Commerce Committee and the National Ocean Policy Study Subcommittee, Senator HOLLINGS, for crafting this bill that I am pleased to cosponsor. I also want to commend Congressman

GERRY STUDDS for his leadership in drawing congressional attention to this pressing issue.

The depletion of groundfish stocks is a serious problem that threatens one of the most essential industries in New England. The volume of groundfish landings, which averaged 750,000 metric tons in 1965, has fallen sharply to an annual average of 176,000 metric tons today. We must take steps to reverse this trend and protect the long-term viability of these resources. The issue is an economic as well as an environmental imperative. The future of the industry and the large number of families who depend on it for their livelihood requires wise management of the cod, flounder, and haddock stocks that are commercially valuable, and that have been the mainstay of the industry for more than three centuries.

We must also pursue these needed longrun conservation goals in a way that does not cause undue burdens on members of the fishing community in the shortrun. Whatever steps are taken must be arrived at fairly, and must be necessary to protect their long-term interests as well.

This is not an easy balance to strike, but I believe this legislation will help spur the needed changes and do so in a way that minimizes shortterm shocks to members of the fishing community.

I am particularly pleased that the chief sponsors of the bill agreed to include a new fisheries reinvestment fund, to be funded primarily through an annual $5 million transfer from the Saltonstall-Kennedy industry grant program. This new fund will provide grants to assist the fishing industry in pursuing new growth, such as developing additional uses for fish byproducts and improved techniques for fish hatcheries, and building the market for underutilized species, which are in abundant supply and which prey on groundfish.

Just as defense cutbacks present an opportunity for economic conversion to meet unmet civilian needs and encourage growth in new industries as we move into the 21st century, the decline in groundfish stocks opens the door to vigorous pursuit of new technologies and products associated with the marine resources that we are working to protect. The Federal Government should be an active partner in helping to promote these developments.

I urge my colleagues in the Senate to support this important bill to restore and revitalize the depleted groundfish resources that are so important to our region, and to help the fishing industry expand into additional promising areas of endeavor.●

ADDITIONAL COSPONSORS

S. 781

At the request of Mr. SARBANES, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 781, a bill to authorize the Indian American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

S. 1100

At the request of Mr. KERRY, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 1100, a bill to authorize the Secretary of Housing and Urban Development to provide grants to urban and rural communities for training economically disadvantaged youth in education and employment skills and to expand the supply of housing for homeless and economically disadvantaged individuals and families.

S. 1361

At the request of Ms. MIKULSKI, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 1361, a bill to remedy the serious injury to the United States shipbuilding and repair industry caused by subsidized foreign ships.

S. 1578

At the request of Mr. THURMOND, the names of the Senator from Alabama [Mr. HEFLIN], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 1578, a bill to recognize and grant a Federal charter to the Military Order of World Wars.

S. 2060

At the request of Mrs. KASSEBAUM, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 2060, a bill to revise the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Orphan Drug Act, and for other purposes.

S. 2106

At the request of Mr. CRANSTON, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2106, a bill to grant a Federal charter to the Fleet Reserve Association.

S. 2376

At the request of Mr. PRESSLER, the names of the Senator from New York [Mr. D'AMATO], the Senator from North Carolina [Mr. HELMS], the Senator from Kansas [Mr. DOLE], and the Senator from California [Mr. SEYMOUR] were added as cosponsors of S. 2376, a bill to state the policy of the United States regarding United States relations with the governments of the former Federal People's Republic of Yugoslavia, and for other purposes.

S. 2624

At the request of Mr. GLENN, the names of the Senator from Maine [Mr. MITCHELL], and the Senator from Pennsylvania [Mr. WOFFORD] were added as cosponsors of S. 2624, a bill to authorize appropriations for the Interagency Council on the Homeless, the Federal Emergency Management Food and Shelter Program, and for other purposes.

S. 2646

At the request of Mr. LUGAR, the names of the Senator from Nebraska [Mr. EXON], the Senator from Oklahoma [Mr. NICKLES], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of S. 2646, a bill to amend the Rural Electrification Act of 1936 to provide eligible rural electric borrowers with the means to secure necessary financing from private sources, and for other purposes.

S. 2763

At the request of Mr. ROTH, the names of the Senator from Utah [Mr. HATCH], and the Senator from Illinois [Mr. SIMON] were added as cosponsors of S. 2763, a bill to establish the Mike Mansfield Fellowship Program for intensive training in the Japanese language, government, politics, and economy.

S. 2785

At the request of Mr. THURMOND, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2785, a bill to make a technical amendment to the False Claims Act.

S. 2826

At the request of Mr. KENNEDY, the names of the Senator from Hawaii [Mr. INOUYE], and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 2826, a bill to reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States.

S. 2832

At the request of Mr. BOND, the names of the Senator from Alabama [Mr. SHELBY], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2832, a bill to require that all Federal printing be performed using cost-competitive inks whose pigment vehicles are made entirely from soybean oil, and for other purposes.

SENATE JOINT RESOLUTION 288

At the request of Mr. LIEBERMAN, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Joint Resolution 288, a joint resolution designating the week beginning July 26, 1992, as "Lyme Disease Awareness Week."

SENATE JOINT RESOLUTION 294

At the request of Mr. LAUTENBERG, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of Senate Joint Resolution 294, a joint resolution to designate the week of October 18, 1992 as "National Radon Action Week."

SENATE JOINT RESOLUTION 301

At the request of Mr. LAUTENBERG, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Joint Resolution 301, a joint resolution designating July 2, 1992, as "National Literacy Day."

SENATE JOINT RESOLUTION 309

At the request of Mr. CRANSTON, the names of the Senator from Louisiana

[Mr. BREAUX], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Joint Resolution 309, a joint resolution designating the week beginning November 8, 1992, as "National Women Veterans Recognition Week."

AMENDMENTS SUBMITTED

WORKPLACE FAIRNESS ACT

BUMPERS AMENDMENT NOS. 2373 THROUGH 2376

(Ordered to lie on the table.)

Mr. BUMPERS submitted four amendments intended to be proposed by him to the bill (S. 55) to amend the National Labor Relations Act and the Railway Labor Act to prevent discrimination based on participation in labor disputes, as follows:

AMENDMENT NO. 2373

At the appropriate place, insert the following:

"(i) except for employers employing an average of fewer than 500 employees during the preceding three years, to promise, to threaten, or take other action—

AMENDMENT NO. 2374

At page 2, line 10, strike all through page 2, line 11, and insert in lieu thereof the following:

"(i) except for employers employing an average of fewer than 500 employees during the preceding three years, to promise, to threaten, or take other action—

AMENDMENT NO. 2375

At the appropriate place, insert the following:

"Nothing in this section shall apply to businesses employing an average of 500 or fewer employees during the preceding three years."

AMENDMENT NO. 2376

At the appropriate place, insert the following:

"Nothing in paragraph 6 of section 8(a) of the National Labor Relations Act shall apply to businesses employing an average of 500 or fewer employees during the preceding three years."

KENNEDY AMENDMENT NOS. 2377 THROUGH 2379

(Ordered to lie on the table.)

Mr. KENNEDY submitted three amendments intended to be proposed by him to the bill S. 55, supra, as follows:

AMENDMENT NO. 2377

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2378

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of

this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2379

In the language proposed to be stricken, strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to

be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

METZENBAUM AMENDMENT NOS. 2380 THROUGH 2388

(Ordered to lie on the table.)

Mr. METZENBAUM submitted nine amendments intended to be proposed by him to the bill S. 55, supra, as follows:

AMENDMENT NO. 2380

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2381

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2382

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive

representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2383

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2384

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's

offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice; *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT No. 2385

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt,

peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2386

In the language proposed to be stricken, strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 44 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 44 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 44 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2387

In the language proposed to be stricken, strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 44 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 44 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 44 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that

were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2388

In the language proposed to be stricken, strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 43 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 43 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 43 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of

the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

DOLE AMENDMENT NOS. 2389 AND 2390

(Ordered to lie on the table.)

Mr. DOLE submitted two amendments intended to be proposed by him to the bill S. 55, supra, as follows:

AMENDMENT NO. 2389

At the appropriate place, insert the following new section:

SEC. . EFFECTIVE DATE.

Notwithstanding any other provision of law, the amendments made by this Act shall become effective on the date on which the House of Representatives and the Senate adopt a Concurrent Resolution that provides employees of such House and Senate with same rights to organize, bargain collectively and strike as employees in the private sector have under the National Labor Relations Act, except that the appropriate United States district courts, rather than the National Labor Relations Board, shall be the applicable forum for adjudicating unfair labor practice cases and representation proceedings.".

AMENDMENT NO. 2390

On page 3, line 15, strike the first period and all that follows through the end of the bill and insert the following:

except that this paragraph shall not apply—

"(I) in the case of a labor organization that has emerged in threats of violence, acts of violence, harassment, or intimidation, in connection with the labor dispute involved, against the employer, against any of its agents, against any employees, or against an employer's property;

"(II) to a labor dispute that costs the State, city, county, or other political subdivision of the State in which the dispute occurs more than $50,000 in additional wages and overtime expenses for law enforcement or other employees of that State, city, county, or political subdivision; or

"(III) in the case that any employee, under the terms of the employer's last contract offer, would be paid in wages and benefits an amount that exceeds 150 percent of the per capita personal income of persons employed within the State in which that employee is employed.

HATCH AMENDMENT NOS. 2391 THROUGH 2403

(Ordered to lie on the table.)

Mr. HATCH submitted 13 amendments intended to be proposed by him to the bill S. 55, supra, as follows:

AMENDMENT NO. 2391

At the appropriate place, insert the following new section:

SEC. . EFFECTIVE DATE.

Notwithstanding any other provision of law, the amendments made by this Act shall become effective on the date on which the House of Representatives and the Senate adopt a Concurrent Resolution that provides employees of such House and Senate with same rights to organize, bargain collectively and strike as employees in the private sector have under the National Labor Relations Act, except that the appropriate United States district courts, rather than the National Labor Relations Board, shall be the applicable forum for adjudicating unfair labor practice cases and representation proceedings.".

AMENDMENT NO. 2392

At the appropriate place, insert the following new section:

"SEC. . APPLICATION OF DEMONSTRATION.

(a) The provisions of this Act shall apply only to labor disputes occurring in the following states: Alabama, Connecticut, Georgia, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, and West Virginia.

(b) Not later than three years after the effective date of this Act, the Secretary of Labor shall convene a task force to study the impact of extending the applicability of this Act to employees covered by the National Labor Relations Act in all states.

(c) The Secretary shall ensure balanced representation on the task force among representatives of organized labor, employers or employer organizations, and employees. The Secretary shall also include experts from relevant academic disciplines and professions.

(d) The Secretary shall report to Congress no later than four years after the effective date of this Act."

AMENDMENT NO. 2393

At the appropriate place, insert the following new section:

"SEC. . LEGISLATIVE TASK FORCE STUDY.

(a) The provisions of this Act shall apply only after the provisions of subsections (c) and (d) of this section have been met.

(b) LEADERSHIP TASK FORCE.—The Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives shall establish a leadership task force to examine the feasibility of applying this Act to employees covered under the National Labor Relations Act in all the States. The task force shall be composed of—

(1) three members of the Senate, of which—

(A) one member shall be appointed by the President Pro Tempore of the Senate;

(B) one member shall be appointed by the Majority Leader of the Senate; and

(C) one member shall be appointed by the Minority Leader of the Senate; and

(2) three members of the House of Representatives, of which—

(A) one member shall be appointed by the Speaker of the House of Representatives;

(B) one member shall be appointed by the Majority Leader of the House of Representatives; and

(C) one member shall be appointed by the Minority Leader of the House of Representatives.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the leadership task force established under subsection (1) shall prepare and submit to the Congress a report concerning the examination conducted under such subsection. Such a report shall contain the results of such examination and a determination by the leadership task force.

(d) EFFECT OF DETERMINATION.—If in the report submitted under subsection (1), the leadership task force determines that it is feasible to apply this Act to all States, the Congress shall take all appropriate action to implement such determination.

(e) RELATION TO OTHER PROVISIONS.—Notwithstanding any other provisions of this

Act, the requirements of this section shall supersede any other requirements in this Act with respect to the date on which the provisions of this Act become effective, and this Act shall only become effective in selected states listed above on the date of enactment until such time as the other provisions of this section have been satisfied.

AMENDMENT NO. 2394

At the appropriate place, insert the following new section:

"SEC. . The provisions of this act shall not apply (1) in the case of a labor organization that has engaged in acts of violence, threats of violence, harassment or intimidation in connection with the labor dispute involved, against the employer, against any of its agents, against any employees, or against an employer's or an employee's property; or (2) to a labor dispute that costs the state, city, county, or other political subdivision of the state in which such subdivision incurs more than $100,000 in additional wage and overtime expenses for law enforcement or other employees of that state, city, county, or political subdivision, and the labor organization involved shall be liable for such expenses; or (3) in the case that any employee who, under the terms of the employer's last contract offer, would be paid in wages and benefits an amount that exceeds 150 percent of the per capita personal income of persons within the state in which that employee is employed."

AMENDMENT NO. 2395

"On page 2, line 18, following the comma, strike all through the word 'recognized' on page 2, line 21."

AMENDMENT NO. 2396

Beginning on page 4, line 5, strike all through page 7, line 16, and insert the following:

"organization or the employer, at least seven calendar days before engaging in any such strike and after the employer and the labor organization have bargained in good faith but have bargained to an impasse, and any existing collective bargaining agreement between the employer and the labor organization has expired, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the labor organization does not accept the employer's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall not apply for the duration of the labor dispute and the labor organization may not strike for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report, provided that if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization's serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer: *Provided further*, That if neither the labor organization nor the employer serves such written notice during the seven-day period and the employer thereafter serves such written notice upon the labor organization, the provisions of subsections (i) and (ii) shall not apply with respect to any actions taken by the employer on or after the date the labor organization receives the employer's offer and the labor organization may not strike for the duration of the labor dispute.

SEC. . Notwithstanding any other provision of this Act, the provisions of subsections (i) and (ii) shall not apply to any strike by a labor organization unless said labor organization has been certified as the exclusive bargaining representative of the employees in a secret ballot election."

AMENDMENT NO. 2397

At the appropriate place add the following:

"The provisions of sections (i) and (ii) shall not apply and a strike by a labor organization shall become illegal if the strike disrupts essential supplies and services."

AMENDMENT NO. 2398

Beginning on page 4, line 5, strike all through the period on page 4, line 18, and insert the following:

"organization or the employer, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Reconciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the labor organization does not accept the employer's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall not apply for the duration of the labor dispute and the labor organization may not strike for the duration of the labor dispute."

AMENDMENT NO. 2399

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply to any employee who, under the terms of the employer's last contract offer, would be paid wages and benefits in an amount that exceeds 150 percent of the per capita personal income of persons within the state in which that employee is employed."

AMENDMENT NO. 2400

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply if the labor organization involved has been convicted of violating any criminal laws of the United States, or State, district or territory, or has committed within the prior six-month period an act of violence or threatened to commit an act of violence

against the employer, against any of the employer's agents or employees, or against property."

AMENDMENT NO. 2401

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply if the labor organization involved has, prior to the commencement of the labor dispute, threatened to prohibited an employer from continuing to operate during a labor dispute or has engaged in conduct, other than authorizing striking employees to withhold their services, that is aimed at interfering with an employer's ability to continue to operate during a labor dispute."

AMENDMENT NO. 2402

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply in the case of a labor organization that has engaged in acts of violence, threats of violence, harassment, or initimidation in connection with the labor dispute involved against the employer, against any of the employer's agents or employees, or against their property."

AMENDMENT NO. 2403

At the appropriate place, insert the following:

"SEC. . The provisions of this Act shall not apply to a labor dispute that costs the State, city, county, or other political subdivision of the State in which the labor dispute occurs more than $100,000 in additional wages and overtime expenses for law enforcement or other employees of that State, city, or political subdivision. The labor organization involved shall be liable for any such expenses."

BINGAMAN AMENDMENT NO. 2404

(Ordered to lie on the table.)

Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 55, supra, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) for a period of 1 year following the commencement of a strike, to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally returned to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute.".

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by these subsections over those employees' wages, hours or other terms and conditions of employment unless the labor organization, at least 7 calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within 7 calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within 10 calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code, that:

(i) The parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issue its report, provided that if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional 7 calendar days,

(ii) During this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within 7 calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the 7-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of 2 years unless the fact-finding recommendations are for a lesser duration.

(D) If, within 7 calendar days after a factfinding board submits its report and recommendations, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection A. The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the 7-day period; provided that if neither the labor organization nor the employer serves such written notice during the 7-day period and the labor organization thereafter serves written notice of such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth."; and

(2) by adding at the end thereof the following:

(b) No carrier, or officer or agent of the carrier, for a period of one year following the commencement of a strike, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.".

"(3) The provision of subsections (1) and (2) shall not apply:

"(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) is-

sues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendation; *provided* that if both the labor organization and the carrier fail to accept the emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice with the National Mediation Board and the carrier, the provisions of subsection (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That, if both the labor organization and carrier accept the recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization. Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

"(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 9a(e) selects the final offer submitted by the carrier,".

BINGAMAN AMENDMENT NO. 2405

(Ordered to lie on the table.)

Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 55, supra, as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) for a period of 1 year following the commencement of a strike, to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally returned to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute.".

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by these subsections over those employees' wages, hours or other terms and conditions of employment unless the labor organization, at least 7 calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within 7 calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within 10 calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code, that:

(i) The parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issue its report, provided that if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional 7 calendar days,

(ii) During this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within 7 calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the 7-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of 2 years unless the fact-finding recommendations are for a lesser duration.

(D) If, within 7 calendar days after a factfinding board submits its report and recommendations, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection A. The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the 7-day period; provided that if neither the labor organization nor the employer serves such written notice during the 7-day period and the labor organization thereafter serves written notice of such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth."; and

(2) by adding at the end thereof the following:

(b) No carrier, or officer or agent of the carrier, for a period of one year following the commencement of a strike, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) an (B) of paragraph (1) and who is working for or has unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.".

"(3) The provision of subsections (1) and (2) shall not apply:

"(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendation; *provided* that if both the labor organization and the carrier fail to accept the emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice with the National Mediation Board and the carrier, the provisions of subsection

(1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That, if both the labor organization and carrier accept the recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization. Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

"(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 9a(e) selects the final offer submitted by the carrier,".

PACKWOOD AMENDMENTS NOS. 2406 THROUGH 2410

(Ordered to lie on the table.)

Mr. PACKWOOD submitted five amendments intended to be proposed by him to the bill S. 55, supra, as follows:

AMENDMENT NO. 2406

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 44 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 44 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 44 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emer-

gency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2407

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2408

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2409

Strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A)

and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

AMENDMENT NO. 2410

In the language proposed to be stricken, strike all after the first word and insert in lieu thereof the following:

SECTION 1. PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF LABOR DISPUTES.

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended—

(1) by striking the period at the end of paragraph (5) and inserting "; or"; and

(2) by adding at the end thereof the following new paragraph:

"(6) to promise, to threaten, or take other action—

"(i) to hire a permanent replacement for an employee who—

"(A) at the commencement of a labor dispute was an employee of the employer in a bargaining unit in which a labor organization was the certified or recognized exclusive representative or, on the basis of written authorizations by a majority of the unit employees, was seeking to be so certified or recognized; and

"(B) in connection with that dispute has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection through that labor organization; or

"(ii) to withhold or deny any other employment right or privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of clause (i) and who is working for or has unconditionally offered to return to work for the employer, out of a preference for any other individual that is based on the fact that the individual is performing, has performed or has indicated a willingness to perform bargaining unit work for the employer during the labor dispute."

(iii)(A) The provisions of subsections (i) and (ii) shall not apply to a strike by a labor organization covered by those subsections over the striking employees' wages, hours or other terms and conditions of employment, unless the labor organization, at least seven calendar days before engaging in any such strike, serves a written notice upon the employer stating the labor organization's willingness to submit all unresolved issues in the dispute to a factfinding board as set

forth in subsection (B). A copy of the union's notice shall be mailed to the Federal Mediation and Conciliation Service.

(B) If the labor organization serves notice as provided in subsection (A), the employer shall respond within seven calendar days and shall mail a copy of its response to the Federal Mediation and Conciliation Service. If the employer does not accept the union's offer to submit the unresolved issues to factfinding, the provisions of sections (i) and (ii) shall apply for the duration of the labor dispute. If the employer does accept that offer, the dispute shall be submitted to a factfinding board of the kind provided for in section 1207(b) of title 39 of the United States Code but constituted of one member representing the labor organization, one member representing the employer, and one neutral member experienced in factfinding and interest arbitration all selected within ten calendar days in the manner provided for in section 1207(c)(1) of that title. The factfinding board shall conduct a hearing of the kind required by section 1207(c)(2) of title 39 and shall within 45 calendar days after its appointment issue a report of its findings and of its recommendations for settling the unresolved issues so as to achieve a prompt, peaceful and just settlement of the dispute. By agreeing to submit all unresolved issues to factfinding as provided in this section, the parties shall be deemed to have made an agreement, enforceable under section 185 of title 29, United States Code that:

(i) the parties' preexisting collective bargaining agreement, if any, or the existing wages, hours, and other terms and conditions of employment in effect at the time of the union's offer to submit the dispute to factfinding, shall be extended from the date of the union's offer to utilize those procedures until the earlier of 45 calendar days after the board is appointed or until the factfinding board issues its report: *Provided*, That if the factfinding report issues within 45 calendar days of the board's appointment, the collective bargaining agreement or preexisting employment conditions shall continue in effect for an additional seven calendar days;

(ii) during this time period, there shall be no strike or lockout over any issue submitted to the factfinding board or that is otherwise prohibited by the parties' preexisting collective bargaining agreement.

(C) Within seven calendar days after a factfinding board issues its report, the employer and the labor organization shall serve written notice on the Federal Mediation and Conciliation Service stating whether the party accepts the factfinding recommendations. At the conclusion of the seven-day period, the Federal Mediation and Conciliation Service shall notify the parties as to whether the labor organization and/or the employer has accepted the board's recommendations. If both the labor organization and the employer have so accepted, the factfinding recommendations as to all unresolved issues, and the parties' agreement on all issues that were resolved by agreement, shall be deemed to be a collective bargaining agreement between the employer and the labor organization enforceable pursuant to section 185 of this title. Should the parties be unable to reach agreement on reducing that contract to writing, either party may request the factfinding board to supplement its initial report with the necessary contractual language. The resulting agreement shall be deemed to have a duration of two years unless the factfinding recommendations are for a lesser duration.

(D) If, within seven calendar days after a factfinding board submits its report and recommendation, the labor organization serves written notice to the Federal Mediation and Conciliation Service of the labor organization acceptance of the recommendations of the factfinding board and the employer does not serve written notice of a like acceptance, the provisions of subsections (i) and (ii) shall apply from the earlier of the dates on which the factfinding report was issued or was due to be issued under subsection (A). The provisions of subsection (i) and (ii) shall not apply after a factfinding report issues if the labor organization fails to serve written notice of an acceptance of the factfinding recommendations during the seven-day period, provided that if neither the labor organization nor the employer serves such written notice during the seven-day period and the labor organization thereafter serves such written notice upon the employer, the provisions of subsections (i) and (ii) shall apply with respect to any actions taken by the employer on and after the date the employer receives the labor organization's offer.

SEC. 2 PREVENTION OF DISCRIMINATION DURING AND AT THE CONCLUSION OF RAILWAY LABOR DISPUTES.

Paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152) is amended—

(1) by inserting "(a)" after "Fourth"; and

(2) by adding at the end thereof the following:

"(b) No carrier, or officer or agent of the carrier, shall promise, threaten or take other action—

"(1) to hire a permanent replacement for an employee who—

"(A) at the commencement of a dispute was an employee of the carrier in a craft or class in which a labor organization was the designated or authorized representative or, on the basis of written authorizations by a majority of the craft or class, was seeking to be so designated or authorized; and

"(B) in connection with that dispute has exercised the right to join, to organize, to assist in organizing, or to bargain collectively through that labor organization; or

"(2) to withhold or deny any other employment right to privilege to an employee, who meets the criteria of subparagraphs (A) and (B) of paragraph (1) and who is working for or as unconditionally offered to return to work for the carrier, out of a preference for any other individual that is based on the fact that the individual is employed, was employed, or indicated a willingness to be employed during the dispute.". (3) The provisions of subsections (1) and (2) shall not apply:

(A) to a strike which commences after an Emergency Board appointed pursuant to section 10 of this Act (45 U.S.C. section 160) issues a report as provided for in section 10 of this Act, unless, in written notices filed with the National Mediation Board within 20 days after the Emergency Board issues its report, the labor organization accepts and the carrier does not accept the Emergency Board's recommendations; provided that if both the labor organization and the carrier fail to accept the Emergency Board's recommendations within such 20-day period, and the labor organization thereafter files a written notice of acceptance with the National Mediation Board and the carrier, the provisions of subsections (1) and (2) shall apply with respect to any actions taken by the carrier on or after the date the carrier receives the labor organization's notice: *Provided further*, That if both the labor organization and the carrier accept the recommendations of the Emergency Board, those recommendations as to all unresolved issues shall be deemed to be an agreement between the carrier and the labor organization; Should the parties be unable to agree on reducing the agreement to writing, either party may request the Emergency Board to supplement its initial report with the necessary contractual language.

(B) to a strike which commences after an Emergency Board appointed pursuant to section 9A(e) of this Act (45 U.S.C. section 159a(e)) selects the final offer submitted by the carrier.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a Markup on Tuesday, June 16, 1992, beginning at 2:30 p.m., in 485 Russell Senate Office Building on S. 2481, the Indian Health Care Amendments Act; S. 1752, the Tribal Courts Act of 1992; S. 2684, the Jicarilla Apache Tribe Water Rights Settlement Act; S. 2507, the Ak-Chin Water Use Amendments Act of 1992, and for other purposes.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Thursday, June 18, 1992, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 2044, the Native American Languages Act of 1991.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Friday, June 19, 1992, beginning at 9:30 a.m., in 485 Russell Senate office Building on S. 2833, the Crow Settlement Act.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Wednesday, June 24, 1992, beginning at 9:30 a.m., in 485 Russell Senate Office Building on the National Indian Policy Center legislation.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

ADDITIONAL STATEMENTS

CHOICE IN EDUCATION

• Mr. SYMMS. Mr. President, education has become one of the top issues of debate during the 102d Congress, as it should. Young people today are this country's future and it is our responsibility to see they are prepared. Not only has Congress recognized the need for change, but many of the States are taking the initiative to implement

their own improvements. Across the Nation, America 2000 schools and communities are being established in conjunction with the President's education proposal. Further, the president of Yale University has announced his plan to resign and establish new for-profit schools nationwide.

In view of this awareness and the movement toward improvement, I want to bring to the attention of my colleagues an essay from a Council for American Private Education [CAPE] newsletter, "'Private' Schools and the 'Public' Good," written by Greg D. Kubiak. The essay makes some strong points on the subject of choice between public and private schools and I would urge my colleagues in the Senate to read it.

Mr. President, I ask that it be inserted in the RECORD, following my remarks.

The essay follows:

"PRIVATE" SCHOOLS AND THE "PUBLIC" GOOD

(By Greg D. Kubiak)

An important discussion to stem from the debate over school reform and educational choice has been the definition, or redefinition, of "public" schools. The issue took new form when the Bush Administration said any school serving the public should be considered a "public" school. It did so even before introducing its 1993 budget calling for choice scholarships to low- and middle-income families for use at "any accredited elementary or secondary school, public or private."

In arguing for federal support of public schools only, choice opponents hope to keep private schools in a box—as though the public is only served by schools run by the government. The threat of such isolation is—not simply a stifled debate of proactive educational opportunity—that private schools could be relegated to a subordinated status with exclusion from current education programs and initiatives. Thus, the private school community has been pushed to clarify its role as serving the public good.

$27 BILLION A YEAR

Private schools, which give parents a choice in education, teach students who perform better on national tests and graduate at a higher rate than their public school counterparts. Perhaps more importantly to taxpayers, private schools save all of us an aggregate of some $27 billion (that's Billion!) a year based on the average cost of educating a student in public schools. That alone is a public service. When was the last time an element of the private sector made such a contribution to the taxpayers, with no string attached? One thing should be clear; that private schools, regardless of their individual missions and motivation, serve the public by helping contribute to an educated citizenry.

Protectors of public education and purists of church/state separation will nobly pat the back of private schools for this philanthropic contribution to society. However, they are quick to dispel any discussion of the government even indirectly subsidizing this private activity. Despite the recognized contribution of the 25,000 private schools which are educating 5.2 million students, and the compulsory school attendance laws of every state, the choice opponents are unable to see the logical link between public service and taxpayer support.

The federal government has long promoted policies that affect private entities which strive to serve the public good. Since the income tax law passed in 1917, the tax code has been used to encourage contributions to private charities which minister to public needs. Arguing in support of a charitable deduction, one U.S. Senator referred to a Washington Post editorial of August 25, 1917 which stated, "This country cannot abandon or impoverish the great structure of private charity and education that has been one of the most notable achievements of American civilization. Therefore with every additional dollar the Government finds it necessary to take in taxation it becomes increasingly necessary to . . . leave untaxed that part of every citizen's income which he may give voluntarily to the public good."

Not only have groups like the Salvation Army and the Nature Conservancy grown and been able to address social problems and concerns, but churches have likewise been the beneficiaries of an American tax code that rewards taxpayers for their financial contributions to such entities. Further, these same groups enjoy a tax-exempt status.

If we are so concerned about the separation of church and state with respect to public policy, why do we dare divert tax dollars to religious organizations by these two methods? I have yet to hear the opponents of educational choice carry out their Constitutional crys of concern by arguing that our tax code should not support religion through the charitable contribution deduction and exempt status provision. As we all know, the balances in the Constitution also guarantee the free exercise of religion among other choices and freedoms.

So the question narrows. Have private schools engaged in a 350 year experiment to "establish" religion with state support, or are they a publicly beneficial means of "free exercise" of educational choice?

CHOICE: AMERICAN STANDARD

The critical issue is not simply whether private schools serve the public good, but whether they are accountable to more than just the parents who choose them. To say that private schools are not publicly accountable is naive. Schools affiliated with CAPE member associations are non-profit, subscribe to policies of non-discrimination, and are subject to strict standards and regulations which vary from state to state. These regulations range from registration with the state education departments to de facto teacher certification. All are subject to health and safety standards which are policed by both state and federal agencies.

While some private schools exist out of the mainstream of American education, surely some definitions of accountability can be outlined, similar to those of CAPE schools.

Government supported choice in education exists for higher education with Pell Grants as it does for pre-kindergarten, child care with child care certificates. Despite the independent or religious affiliation of the providers, the national government has seen fit to support the free choice of those eligible for such aid. Yet, during the debate over giving such choice to low-income elementary and secondary school parents, our public school counterparts have drawn a firm line—or rather a circle. They have tried to distinguish between financial support to low-income parents for child care and college, etching out the middle twelve years of formal education as off-limits for support for educational choice.

Freedom of choice has always been an American standard. Taxpayer support of those choices is not as easy a call. But when the public good is a result of those private decisions, government policy has fallen on the side of promoting and encouraging those choices.

When a federal worker has $25 a month deducted from her paycheck to support a children's hospital, the government lets her deduct the annual payment from her taxable income on the 1040 form. When returning war veterans received educational grants under the GI Bill, no one said they couldn't go to Notre Dame or Texas Christian University because those were religiously affiliated schools. These choices involve government support of a private activity that results in a public good.

THE SOCIAL AGENDA

The desperately tragic events surrounding the Rodney King verdict and the Los Angeles riots have predictably seen some people looking for short term answers and opportunities. Social scientists, journalists and politicians will no doubt debate the social agenda from criminal justice to civil rights to welfare reform throughout this political season. Part of the discussion will likely involve the need for improvement in education as the foundation on which economic, social, and racial peace can be rebuilt in our inner-cities.

If education is part of the answer to deep-seeded ills of society, then all of education which serves the public should be part of the debate. No single program or area of the domestic political agenda can heal the festering wounds of racial prejudice, disrespect of law, or economic inequity. But an educational system sensitive to the individual needs of every child can begin the recovery and rebirth of a nation used to boasting of its diversity. Children caught in the cycle of poverty and neglect can only perpetuate the despair in our inner-cities if established leaders settle for status quo solutions. Words from a Wisconsin Supreme Court decision in March upholding the Milwaukee inner-city, school choice program, give some guidance to policymakers. One judge in the majority wrote: "The Wisconsin legislature, attuned and attentive to the appalling and seemingly insurmountable problems confronting socioeconomically deprived children, has attempted to throw a life preserver to those Milwaukee children caught in the cruel riptide of a school system floundering upon the shoals of poverty, status quo thinking, and despair."

The decline of American competitiveness, mediocrity of national student tests, and violence and hopelessness in our city streets will need more than a single life preserver. But if we are serious about the future opportunities for our children, the debate on education must be serious, bold, and inclusive. Serving the public good deserves no less.●

AN ARCHSTONE OF ANGLO-AMERICAN LIBERTIES

Mr. BYRD. Mr. President, in the year 1215, the frustrations of the Anglo-Norman subjects of King John of England reached the overflow point.

As William, Duke of Normandy, had with regard to England prior to 1066, the Angevin kings of England—in particular, Henry II, Richard I, and John—entertained certain dreams of primacy in France. To further their French interests, the Angevins had exploited their English subjects without respect

to ancient prerogatives, contracts, and understandings lodged deeply in their memories.

Though the English barons had sought repeatedly to negotiate their differences with King John, a definitive, satisfactory, and concilliatory understanding between the King and the peers of the realm had eluded the negotiators. Thus, in a decisive and pragmatic move, the barons renounced their fealty to King John, seized London, and forced John to agree to the terms of the document that we call Magna Carta, which document bears the date June 15, 1215—exactly 777 years ago today.

In recent decades, revisionist historians have sought to minimize the significance of Magna Carta, rightly pointing out that it was a contract primarily between a nearly absolute monarch and almost absolute vassals in which the average subject of the Crown had little or no part.

But, in truth, Magna Carta represents a vital step forward in codifying the rights of all English subjects and a lasting and influential blow to the notion of limitless divine right kingship and arbitrary autocracy. If not the keystone, Magna Carta is a prominent archstone in the vaulting superstructure of Anglo-American liberties, laws, and constitutional precedent. Again and again—back to King John's concessions at Runnymede—the guardians of Anglo-Saxon, Anglo-Norman, and Anglo-American common and codified law have been able to point against the claims of would-be despots, hereditary or elected.

As if to prove the significance of Magna Carta by their own failures, feudal barons in Germany, France, Hungary, and Spain exacted similar contracts from their monarchs in the 13th and 14th centuries, but these agreements fell irresistibly before expanding monarchical power and the exigencies of power politics, national emergency, and history.

But Magna Carta enjoyed periodical reconfirmations from time to time by succeeding English kings, and eventually evolved into an understanding that was held to extend to all free subjects of the British Crown. Thus was born and nurtured in the Anglo-American tradition, legal and constitutional concepts and precepts that became models and paradigms for nations and cultures worldwide.

Today, then, Mr. President, is an anniversary of which every American should take note and for which every American should feel genuine gratitude. On this day—June 15—in 1215—on the meadow beside the banks of the Thames River—our English forbears screwed their courage to the sticking point and forced a tyrant to accept limitations of power that reverberate to this day in some of the freedoms and guarantees that most Americans take for granted. For that reason, I take pride in hailing this, the 777th Anniversary of Magna Carta.

Mr. President, the Charter is now a shriveled parchment in the British Museum. It contains 63 provisions, and many of them are not of lasting importance.

Three of the most important are these: "No freeman shall be arrested, imprisoned, outlawed or deprived of property, except by judgment of his equals or the law of the land."

"The law of the land." Those words are equivalent to our own words in the Constitution of the United States, "due process of law."

"Justice shall not be sold, delayed or denied to any freeman."

And this one, "No taxes, except the customary ones, shall be levied except with the consent of a council of prelates and greater barons."

King John soon tried to violate his promises. But the Charter provided for a committee of nobleman to make sure that the King followed his promises. The next 37 kings of England, who came after John, agreed to follow the provisions of the Charter. Sometimes the kings had the support of the people in disregarding the Charter, as when the barons used the document as a mask to hide their feudal privileges, when they were attacked by the King. But during the time of the Stuart dynasty, which began in the year 1603, the Magna Charta took on its present meaning. The power of the barons had been broken by royal absolutism, and the Charter stood as a guarantee against oppression by the king.

The Charter was drawn up mainly to give more rights and privileges to the great barons. But the Charter is still an outstanding landmark in the history of human liberty. It took away the absolute power of the king over his subjects and guaranteed certain rights to every freeman.

It was an admission by the king that he was below the law.

In 1946 the British House of Lords took action to change the spelling of the word "Charta," which had been spelled C-h-a-r-t-a. The letter "H" which had appeared in the spelling since the time of the Middle Ages, was dropped, and the word was officially changed to "Carta" C-a-r-t-a, its earlier spelling.

Mr. President, in the book titled "A Documentary History of England, Volume 1" by J.J. Bagley and P.B. Rowley, is set forth the Magna Carta, and its 63 clauses.

Mr. President, I ask unanimous consent that these 63 clauses of the Magna Carta, as they appear in the text of the book to which title I have already alluded, appear in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

6. MAGNA CARTA, 1215

John, by the grace of God king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, sends greeting to the archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, reeves, ministers, and all other officials and his loyal subjects.

Know that we have made the grants and concessions which follow, in the sight of God and for the salvation of our soul and the souls of all our ancestors and heirs, in honour of God and to enhance the prestige of Holy Church, and for the better ordering of our kingdom. We have been advised by our reverend fathers, Stephen archbishop of Canterbury, primate of all England and cardinal of the Holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter bishop of Worcester, William bishop of Coventry, and Benedict bishop of Rochester; master Pandulph subdeacon and member of the household of the lord Pope; brother Aylmer master of the Knights Templar in England; and the noblemen, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warenne, William earl of Arundel, Alan of Galloway constable of Scotland, Warin fitz Gerald, Peter fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert de Ropsley, John Marshal, John fitz Hugh; and others of our faithful subjects.

(1) In the first place, we have given to God, and by this our present charter have confirmed for ourselves and our heirs for ever, that the English Church shall have its freedom and shall enjoy full and undisturbed possession of all its rights and privileges. We desire that this grant be honoured; and that we are sincere in this is shown by our action before the outbreak of hostilities between us and our barons, when without prompting or hidden intent, we granted to the English Church that freedom of appointments which is counted as the greatest and most necessary of its privileges, confirming our grant by charter and obtaining its further confirmation by the lord pope Innocent III. We will ourselves observe this freedom of the church, and we desire that it shall be similarly observed in all good faith by our heirs for ever.

To all free men of our kingdom we have granted for ourselves and our heirs for ever all the rights set down below, to have and hold for themselves and their heirs from us and our heirs.

(2) If any of our earls or barons, or any other of our tenants in chief, holding directly from the crown in return for knight service, dies and leaves an heir of full age from whom a relief is due, the heir shall succeed to his inheritance on payment of the accustomed relief, namely £100 from the heir or heirs of an earl for the whole estate of the earl; £100 from the heir or heirs of a baron, for the whole baronial estate; 100s.at most from the heir or heirs of a knight for the whole knight's fee, with lesser amounts from those who owe less, according to the established custom of the individual fees.

(3) But if the heir of any such earl, baron, or other tenant in chief is under age and therefore a ward, he shall succeed to his inheritance when he comes of age without payment of any relief or fine.

(4) The guardian of the estate of an heir who is under age shall only take from it reasonable rents, customary dues, and labour

services, without destruction of wastage of men or property. In cases where we ourself have entrusted the guardianship of any such estate to the sheriff or other person answerable to us for its revenues, and the guardian has made destruction or wastage of his trust, we will exact compensation from him and the estate shall be entrusted to two men of legal standing and discernment of that same fee, who shall be answerable to us or to our nominee for the estate revenues. Similarly, if we have given to anyone or sold him the guardianship of any such estate and he makes destruction or wastage of it, the guardianship shall be taken from him and transferred to two men of legal standing and discernment of that same fee, answerable to us as in the former case.

(5) But for so long as the guardian has the estate in his keeping, he shall maintain the buildings, parks, game preserves, ponds, mills, and other appurtenances of the estate out of the estate revenues. And he shall restore to the heir upon his majority the whole of his estate stocked with ploughs and such other agricultural equipment as the time of year demands and the estate revenues can reasonably support.

(6) Heirs may be given in marriage by their guardians, but the marriage must be a suitable one socially, and before it is contracted notice shall be given to the near blood relations of the heir.

(7) Upon the death of her husband a widow shall receive her marriage portion and her inheritance forthwith and without difficulty; and she shall pay nothing to receive her dowry or marriage portion, or to succeed to the property which she and her husband owned on the day of his death.[1] She may remain in her husband's house for forty days after his death and within that time her dowry shall be assigned to her.

(8) No widow shall be forced to remarry for so long as she wishes to live without a husband, but she shall give security that she will not remarry without our consent if she is our tenant, or without the consent of the lord whose tenant she is, if she holds from another.

(9) Neither we nor our bailiffs will seize any land or distrain upon the rents for any debt so long as the chattels of the debtor are sufficient in value to satisfy the debt, nor shall distraint be made upon the debtor's sureties if he can satisfy the debt himself. But if the debtor has defaulted in payment and has not the means to discharge the debt, then the sureties shall answer for it. They may, if they so wish, take the debtor's lands and revenues into their possession until they have recovered the amount of the debt paid by them on his behalf, unless the debtor proves that he has discharged his obligations towards them.

*(10) If anyone has borrowed money from the Jews, whether the amount is great or small, and dies before the debt is repaid, no interest shall accrue on the outstanding capital of the debt during the minority of the heir, no matter whose tenant he is; and if such a debt passes into our hands we will take only the principal amount specified in the bond.

*(11) The window of a man who dies owing a debt to the Jews shall receive her dowry in full and make no payment from it on account of the debt. Any children of the dead man who are under age shall have necessary provision made for them appropriate to the nature of their father's holding, and the balance of the estate shall then be applied in discharge of the debt, but the feudal incidents shall be reserved. Debts owing to others than Jews shall be treated in the same manner.

*(12) Scutage and aids shall only be levied in our kingdom by common counsel of our kingdom, unless occasioned by the need to ransom our own person, to make our eldest son a knight, or to give our eldest daughter once in marriage; the amounts of aid on these occasions shall be reasonable. Aids from the city of London shall be treated similarly.

(13) The city of London shall retain all its ancient privileges and traditional trading rights by land and water. We also desire and grant that all other cities, boroughs, towns, and ports shall retain all their privileges and traditional trading rights.

*(14) To obtain common counsel of the kingdom for the assessment of an aid—for other purposes than the three specified above—and scutage, we will send individual letters of summons to the archbishops, bishops, abbots, earls, and chief barons, and general summonses through our sheriffs and other officials to all our tenants in chief, calling them to meet together on a given date—which shall be not less than forty days after the issue of the summons—and in a given place; and in all the letters we will set down the business of the assembly. When summonses have been issued in this manner, items of business on the appointed day shall be decided by the advice of those present, notwithstanding the absence of some of those who were summoned.

*(15) In future we will not allow anyone to levy an aid from his free tenants except for the purpose of ransoming his person, making his eldest son a knight, or giving his eldest daughter once in marriage; aids levied for such purposes shall be within reason.

(16) No one shall be compelled to render more service for a knight's fee or other free holding of land than is properly due from it.

(17) Common pleas shall not be heard in the various places where, from time to time, our royal court is established, but in some fixed place.

(18) Inquests of *Novel Disseisin*, *Mort d' Ancestor*, and *Darrein Presentment* shall be conducted only in the courts of the counties where the cases arise, and in the following manner. We, or our justiciar if we are out of the kingdom, will send two justices to each county four times a year, and they together with four knights of the county, elected by the county, shall conduct the said assizes in the county court on the same day and in the same place as the meeting of the county court.

*(19) But if the assizes cannot be taken on the day when the county court meets, then as many knights and freeholders as are needed for decisions to be given in proper form on the number of cases outstanding shall remain behind after the meeting of the county court.

(20) An offender who is liable for punishment at our hands shall be fined in proportion to the seriousness, or otherwise, of his offence; but fines shall not be imposed which are so heavy as to cause a freeholder to lose his holding, or a merchant to lose his stock-in-trade, or a villain to lose the means of earning his living. Fines shall only be imposed upon these categories of persons following the attestation of charges against them by sworn juries of local men of proved honesty.

(21) Earls and barons shall only be fined by judgment of their equals, according to the measure of their offense.

(22) Any fine imposed upon a clerk in holy orders in respect of his lay property shall be assessed on the foregoing principles, without taking the value of his ecclesiastical benefice into account.

(23) No town or individual shall be forced to build bridges at river-banks except those who are under a customary and legal obligation to do so.

(24) No sheriff, constable, coroner, or other of our officials shall hear cases which are the prerogative of the royal courts.

*(25) Each county, hundred, wapentake, and riding shall be assessed at the old farm without any increase, our own demesne manors excepted.

(26) If any one of our lay tenants dies, the sheriff or our bailiff, on production of the royal letters patent of summons for a debt which the dead man owed us, may make an attachment and inventory of such of the dead man's chattels found on the lay holding as are agreed by men of legal standing to represent the amount of the debt; and none of these goods shall then be removed until the debt which was clearly owing to us has been discharged. The rest of the dead man's property shall be left for the executors to dispose of in accordance with the terms of his will. But if the dead man owed us nothing, then all his chattels shall be disposed of according to his wishes, saving to his wife and children their reasonable shares.

*(27) If a freeman dies intestate his chattels shall be distributed by his near blood relations and friends under the supervision of the church, but the rights of anyone to whom the deceased owed a debt shall be safeguarded.

(28) No constable or any other of our officials shall take corn or other goods from anyone without immediate payment in money, unless the vendor is agreeable to a deferred payment.

(29) No constable shall force a knight to pay money in lieu of castle guard duty if the knight is prepared to discharge this duty in person or if, being unable to attend himself for some good reason, he is willing to send a suitable man in his place. A knight shall be exempt from guard duty for such periods as he is engaged on military service, under our leadership or at our command.

(30) No sheriff, royal official, or any other person shall commandeer horses or carts for transport work from a freeman without his consent.

(31) Neither we nor our officials will take wood for castles or other of our works without the owner's consent.

(32) We will not retain possession of the estates of a convicted felon for longer than a year and a day, after which time the estates shall be returned to the man's overlords.

(33) For the future all fish-weirs shall be removed from the Thames and the Medway and throughout England, except along the sea-coast.

(34) The writ called *Praecipe* shall not in future be issued to anyone in respect of any disputed holding of land, where the effect might be to deprive a freeman of his right to the hearing of his case in a local court.

(35) There shall be standard measures of wine, beer, and corn—the London quarter—throughout the whole of our kingdom, and a standard width of dyed, russet, and halberject [better quality? worn under the

[1] This phrase, here translated literally, may relate to joint property of the husband and wife, or to property inherited by the wife and held for her by the husband; on another reading, however, it could refer to the widow's inheritance of the estate, where there were no other heirs, or to the widow's entitlement from her husband's estate, traditionally a third.

hauberk?] cloth—two ells within the selvedges; and there shall be standard weights also.

(36) In future no payment shall be given or accepted for the issue of a writ of inquisition of life or limbs; the writ shall be granted free, and not denied.

(37) If anyone holds land from us in return for the payment of a fee-farm rent, socage, or a burgage rent, and at the same time holds land from someone else in return for knight service, we shall not be entitled to the guardianship of his heir or of the estate which he holds from another's fee merely by reason of the fee-farm rent, socage, or burgage rent which he pays us. Nor shall we have the guardianship of the estate from which the fee-farm rent, socage, or burgage rent issues unless, in the case of a fee-farm rent, the estate is also charged with providing us with knight service. Similarly, we shall not be entitled to the guardianship of a man's heir and of an estate which he holds from someone else merely because he is also a tenant of ours in petty sergeanty in return for a payment of knives, arrows, and the like.

(38) In future no official shall bring anyone to trial on his own unsupported statement without producing trustworthy witnesses to the alleged offence.

(39) No freeman shall be arrested, imprisoned, dispossessed, outlawed, exiled, or in any way deprived of his standing, nor shall we proceed against him by force or send others against him, except by the lawful judgment of his equals and according to the law of the land.

(40) To no one will we sell, refuse, or delay the operation of right or justice.

(41) All merchants shall have free and undisturbed passage to and from England, and shall be safe and unmolested during their stay and in their travels by land and water throughout the country. No burdensome or extraordinary taxation shall be levied upon them, but they shall buy and sell freely on payment only of the proper and anciently established dues. These provisions, however, shall not apply in wartime to nationals of a country at war with us. All such foreign nationals found trading in our lands at the outbreak of war shall be interned, but without loss of life or property until we or our justiciar have ascertained the treatment accorded to such of our own merchants as the outbreak of war has surprised in enemy country; and if we find that our merchants are safe with the enemy, their merchants shall be safe with us.

*(42) In future anyone may leave our kingdom and return, safe and secure by land and water, saving his allegiance to us, except in wartime when temporary restrictions may be imposed for the common good of the realm. This provision does not apply to persons imprisoned or outlawed by due process of law; or to nationals of a country at war with us; or to foreign merchants, who shall be treated in accordance with the provisions of the last section.

(43) If a man dies holding land from an estate which has been escheated to the crown as, for example, from the honours of Wallingford, Nottingham, Boulogne, Lancaster, or any other baronial estate escheated to us, his heir shall not pay us any other relief or perform any other service than he would have paid or performed for the baron, had the baron still held the estate. And we will hold the estate in exactly the same manner as the baron held it.

*(44) Men who are not resident in a royal forest shall not henceforth be brought before our justices of the forest by writs of general summons, unless they are to appear as defendants or as sureties for a person or persons bound over on bail for a forest offence.

*(45) We will only appoint as justices, constables, sheriffs, or other officials such men as are well versed in the law of the kingdom and intend to uphold it.

(46) All barons who have founders' rights in respect of abbeys, as evidenced by charters from kings of England or ancient title, shall have guardianship of them, as is their right, whenever there is a vacancy.

*(47) All forests created in our reign shall be immediately disafforested, and similarly river-banks which we have reserved for our sport during our reign shall be again thrown open.

*(48) All oppressive practices relating to forests, warrens, and river-banks, and the malpractices of foresters, warreners, the sheriffs, and their officers, and river-bank keepers shall, in every county, be the subject of immediate inquiry by twelve sworn knights of the same county, elected by the worthy men of the county; and within forty days of such inquiry, all abuses shall be stamped out, never more to be renewed, by the agency of the said knights; provided always that we, or our justiciar if we are out of England, have been previously informed.[1]

*(49) We will immediately return all hostages and bonds surrendered to us by Englishmen as security for the peace and their faithful service.

*(50) We will utterly discharge from their offices—and they shall not hold office again in England—the relatives of Gerard de Athée, namely: Engelard de Cigiogné, Peter, Guy and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, and Philip Marc, his brothers and his nephew Geoffrey, and all their following.

*(51) As soon as peace is restored, we will expel from the kingdom all foreign knights, crossbowmen, sergeants, and mercenaries who have come with horses and weapons to the harm of the realm.

*(52) If anyone, without legal judgment of his equals, has been dispossessed or deprived by us of lands, castles, privileges, or rights, we will straightway restore these to him, and in the case of any dispute arising thereof, it shall be decided by the twenty-five barons mentioned below in the clause relating to the keeping of the peace. But with regard to anything of which a man was dispossessed or deprived without legal judgment of his equals by our father, King Henry, or our brother, King Richard, and which we now hold or others hold under our guarantee of title, we will be allowed the full period [three years] of immunity from legal proceedings which is customary for crusaders, except in cases where a suit had already been entered or an inquiry instituted at our command before we undertook to make our crusade. But as soon as we return from our pilgrimage or immediately if we abandon it, we will see that full justice is done.

*(53) We shall be allowed a similar period of immunity, and the same provisions for the implementation of justice shall apply[1] in respect of the disafforestation or retention[1] of forests made by our father, Henry, our brother, in Richard; in respect also of the guardianship of dead men's estates in other lords' fees, which we have hitherto held by reason of other land held from us by the deceased in return for knight service; and in respect of abbeys founded on other lords' fees in which the lords of the fees claim to have rights. Immediately on our return from our pilgrimage or upon our abandonment of it, we will see that full justice is done on complaints arising about these matters.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of anyone except her husband.

*(55) Any fines levised by us unjustly and against the law of the land, and any unjust and illegal amercements shall be remitted in their entirety, or judgment shall be delivered therein by the twenty-five barons mentioned below in the clause relating to the keeping of the peace, or by the majority of them and of the said Stephen, archbishop of Canterbury, if he can be present, and of such others as he may wish to bring with him for this purpose: but if the archbishop cannot be present, the business shall proceed without him. Provided always that if a case is set down for hearing, and any of these twenty-five barons have been involved in a similar dispute themselves, they shall be removed from the bench when the case is heard, and others shall be elected and sworn in their place by the rest of the twenty-five, to serve for this one occasion.

*(56) Any Welshman whom we may have dispossessed or deprived of lands, privileges, or anything else without legal judgment of his equals, in England or Wales, shall have immediate restitution made to him, and should a dispute arise it shall be decided in the March by the judgment of his equals; for English holdings, according to English law; for Welsh holdings, according to Welsh law; and for holdings in the March, according to the law of the March. The Welch will do the same with us and ours.

*(57) But regarding anything of which a Welshman was dispossed or deprived without legal judgment of his equals by our father, King Henry, or our brother, King Richard, and which we now hold or others hold under our guarantee of title, we will be allowed the full period of immunity customary for crusaders, except in cases where a suit had already been entered or an inquiry had been instituted at our command before we undertook to make our crusade. But as soon as we return from our pilgrimage, or immediately if we abandon it, we will see that full justice is done according to the laws of the Welsh and of the said religions.

*(58) We will at once return the son of Llewelyn and all the Welsh hostages and bonds delivered to us as security for the peace.

*(59) We will act towards Alexander, King of the Scots, regarding the return of his sisters and other hostages, and the restoration of his privileges and rights, in the same way as towards our other English barons, except as is otherwise provided in the formal agreements which we hold from his father, William, formerly King of the Scots; this will be according to the judgment of his equals in our court.

(60) All the aforesaid customs and rights which we have granted to be maintained in our kingdom in the dealings between us and our people shall be similarly observed by all men of our kingdom, both clergy and laymen, in their dealings with their own people.

*(61) Whereas we have made all the aforesaid grants out of reverence for God, for the better ordering of our kingdom and for the more effective healing of the strife between us and our barons, and desire that our grant

[1] *by the agency of . . . informed.* This passage is not incorporated into the text of the charter in BM. Cotton MS. Augustus II, 106, but there appears as a footnote.

[1] *and the same provisions . . . apply,* and *or retention,* appear as footnotes in BM. Cotton MS. Augustus II, 106, and are not incorporated into the text.

shall remain firm and unshaken in its entirety forever, we do therefore secure and safeguard it by the following provision, namely:

The barons shall elect any twenty-five barons of the kingdom whom they please, and they in their turn shall exert themselves to the full extent of their powers in preserving and upholding, and causing to be upheld, the peaceful settlement and grant of rights which we have made to them and have confirmed by this our present charter; and in the pursuance of these objects, they shall apply the following procedure. If we, the justiciar, our officials or any of our ministers offend against anyone in any respect, or break any of the provisions of the peace or of this guarantee, and the offence is made known to four of the said twenty-five barons, they shall come to us, or to the justiciar if we are out of the kingdom, and laying the cause of the complaint before us, require that we remedy it without delay. And if we, or the justiciar in our absence abroad, have not remedied the complaint within forty days after it was first presented to us, or to him, they shall refer the matter to the rest of the twenty-five barons, and these twenty-five with the commonalty of the whole kingdom shall then distrain and bring pressure to bear upon us in every way open to them, namely, by seizure of our castles, estates, and possessions and by any other means in their power until the complaint has been remedied to their satisfaction, saving only our own person and the persons of our queen and our children. And once satisfaction has been obtained they will stand towards us exactly as they did before.

Anyone in the land shall be free to swear his obedience to the commands of the said twenty-five barons in furtherance of all these aims, and to swear that he will join with them to the full extent of his power in bringing pressure to bear upon us. We publicly and freely give permission to take the oath to anyone who so wishes, and we will at no time prevent anyone from taking it: but rather will we compel those of our subjects who are unwilling of themselves to pledge their support to the barons by this oath of distraint and pressure against us to take the oath by our command.

If any one of the twenty-five barons dies or leaves the country or is in any other way prevented from carrying out his aforesaid duties, the rest of the twenty-five shall choose another in his place, whomever they think best, and he will be sworn, in the same way as the others.

If all the twenty-five barons are present at a meeting and fail to agree on any of the matters which are entrusted to them for action, or if some of those summoned have refused or are unable to attend, any decision taken or instruction issued by the majority of those present shall be held to be as fixed and binding as if all twenty-five had agreed to it.

The twenty-five barons shall swear to observe all the aforesaid provisions faithfully, and they shall use all means in their power to obtain a similar observance from others.

We will not, directly or indirectly, procure from anyone a release of any kind the effect of which would be to cancel or reduce any of the rights and privileges granted by this charter: and if, notwithstanding this provision, such a release is obtained, it shall be considered null and void, and we will never, directly or indirectly, make use of it.[1]

*(62) We have granted full and universal pardon and forgiveness for all feelings of ill-will, resentment, and rancour which have arisen between us and our clerical and lay subjects since the outbreak of hostilities. We have further granted our full forgiveness to all clerics and lay persons for all offences which they have committed in pursuance of the said hostilities between Easter in the sixteenth year of our reign and the restoration of peace, and we have pardoned them to the full extent of our personal concern. We have further caused them to be issued with letters patent under the seals of the lord Stephen archbishop of Canterbury, the lord Henry archbishop of Dublin, the other bishops who were previously mentioned, and master Pandulph, formally attesting the sanction contained in the last clause and the concessions granted by this charter.

*(63) It is accordingly our wish and stern command that the English Church shall have its freedom, and that men in our kingdom shall enjoy full and competent possession of all the aforesaid rights, grants, and privileges in their entirety, in peace and freedom and without disturbance for themselves and their heirs from ourself and our heirs, in every particular and in all places in perpetuity, exactly as is aforesaid.

Both we and the barons have sworn to observe all the foregoing provisions faithfully and without deceit, as witness the beforementioned persons and many others.

Given by our hand in the meadow called Runnymede between Windsor and Staines on the 15th day of June in the seventeenth year of our reign.

Mr. BYRD. Mr. President, we will never again see the 777th anniversary of the great Charter, so I count it a privilege in my own time to have had the good fortune to be serving in the U.S. Senate at the time of this anniversary to which I have had the honor of calling the attention of the Senate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

Mr. BYRD. Mr. President, on behalf of the distinguished majority leader I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10:30 a.m., Tuesday, June 16; that following the prayer, the Journal of Proceedings be deemed approved to date and the time for the two leaders be reserved for their use later in the day; provided further that there then be a period for morning business, not to extend beyond 11:30 a.m., with Senators permitted to speak therein for up to 5 minutes each; ordered further that immediately following the Prayer and the Chair's announcement, Senator BROWN or his designee be recognized for up to 45 minutes; Senators DIXON, ROTH, and GORE for up to 5 minutes each; that at 11:30 p.m., the Senate resume consideration of S. 55, with the time from 11:30 a.m. to 12:30 p.m., for debate on the motion to invoke cloture on the modified committee substitute to S. 55, with the time equally divided and controlled between Senators METZENBAUM and HATCH; and that upon the conclusion of their remarks at that time the Senator from West Virginia [Mr. BYRD] be recognized to speak and that upon the conclusion of his remarks the Senate then stand in recess for the usual two party conferences until the hour of 2:15 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 10:30 A.M.

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I ask in accordance with the previous order that the Senate stand in recess.

Thereupon, the Senate, at 5:39 p.m., recessed until Tuesday, June 16, 1992, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 15, 1992:

DEPARTMENT OF COMMERCE

JOSE ANTONIO VILLAMIL, OF FLORIDA, TO BE UNDER SECRETARY OF COMMERCE FOR ECONOMIC AFFAIRS, VICE MICHAEL RUCKER DARBY, RESIGNED.

DEPARTMENT OF DEFENSE

ROBERT S. SILBERMAN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE G. KIM WINCUP.

NATIONAL MEDIATION BOARD

JOSHUA M. JAVITS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 1995 (REAPPOINTMENT).

[1] This clause is particularly directed against possible attempts to circumvent the charter by appeals to the papal authority.