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# The Impact of Organized Labor on the Defense Trucking and Railroad Industries

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ABSTRACT

The Impact of Organized Labor  
on the Defense Trucking and Railroad Industries

by

Lieutenant Colonel Joel L. McGrady

Labor legislation and the Nation's ability to deal with work stoppages are currently limited to peacetime and wartime situations only. There is no standing legislation which allows the President to order either striking workers or recalcitrant management back to work should there be a work stoppage during mobilization or period of national emergency.

While our labor legislation is adequate for dealing with wartime and peacetime operations, this gap in transitional mobilization legislation can allow for disruption of critical strategic transportation services. In order to correct this shortcoming, the Department of Defense should seek legislation giving the President authority to issue a "remain at work" order before a strike occurs. This legislative authority must also include a provision for directed mediation and binding arbitration.

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**The Impact of Organized Labor  
on the Defense Trucking and  
Railroad Industries**

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## INTRODUCTION

The power of organized labor has been both feared and supported since workers and management first came to understand the value of labor. Throughout the years there has been much concern about the strength of unions in America. Indeed, any organization with the ability to close the doors of steel mills, airlines and railroads is one which demands respect. In the transportation industry unions are a way of life. In the defense portion of the transportation industry, unions have the same impact as they have in the commercial sector. Labor unrest resulting from union-management conflict is a cause of business failure, higher prices for consumers, and the disruption of orderly transportation operations.

The most drastic manifestation of labor unrest is the strike. The ability to strike is also the union's biggest bargaining chip and threat with management. Any work stoppage or strike in the transportation industry will impact on the Department of Defense (DOD), since the DOD is a customer like any other shipper in America. Unlike other shippers, however, the consequences of DOD cargo not being at the right place at the right time can threaten national security. Imagine the disastrous effects of a general transportation strike during the initial stages of Desert Shield when the Armed Forces were beginning the tasks of mobilizing and deploying to the theater of operations. Aside from the loss of

time, the resultant confusion and rescheduling problems would have been horrendous and could have sent the wrong signal of our intentions to Iraq.

With this introduction two questions immediately come to mind:

- o What is the real impact of organized labor on the defense transportation industry?

- o Are adequate legislative safeguards in place to insure sustained transportation support to the DOD during times of crisis?

The scope of this paper is not large enough to deal with the entire transportation industry, therefore I will only discuss the impact of labor and legislative safeguards as they pertain to the rail and trucking industries.

In answering these two questions, I believe one must have an understanding of both the industry and the unions involved. Neither management nor the union is either inherently good or inherently bad. Therefore, I will not take sides with either position, but will attempt to look at the relation between the two and determine the adequacy of current legislation for insuring uninterrupted transportation services to the DOD during times of national crisis. With this in mind, I have organized this paper in the following manner:

- o Industry description and background



- o History of organized labor, specifically in the transportation industry
- o Work stoppages and action taken
- o Legislation and options available
- o Analysis of adequacy of the legislative options
- o Conclusion

### THE INDUSTRY

The trucking and rail industries in the United States are made up of over 47,500 carriers with just over 500 being in the rail industry. The trucking industry generated \$74.7 billion in revenues last year while railroads took in \$31 billion. These two industries serve all markets in the United States and have an export market in Canada and Mexico.<sup>1</sup> Over the past five years, the DOD has averaged moving 10.1 million tons of cargo per year by rail and truck.<sup>2</sup> While this may appear to be an impressive number, it equates to less than one percent of the billions of tons moved each year by commercial shippers.

Since the early 1980's the industry has been substantially deregulated. Deregulation has given rise to increased competition within each mode and between the modes. Deregulation has also challenged management to streamline operations, as much as possible, to maintain profitability. In many cases this streamlining has taken the form of reducing personnel overhead.

This fact has, in some instances, caused management and labor to work together to save jobs at the expense of increased personal compensation.<sup>3</sup> While this has been the case in the trucking industry, the rail industry has just recently completed a turbulent seven year period of labor management dispute and negotiation which ended in a one day strike and a Federal back to work order. The rail strike of 1991 and Government reaction will be discussed later in this paper.

Each of these modes of transportation is unionized to a different degree. Since deregulation, the trucking industry has become less unionized. It is estimated that the number of unionized trucking workers has been reduced by about 100,000 in the past ten years.<sup>4</sup> Even with this loss of membership, however, the Teamsters still represent over 200,000 workers in the trucking industry.<sup>5</sup> Railroads, on the other hand, are highly unionized, with about 80% of the work force unionized in the large class I railroads. Adding to the complexity of railway labor negotiations is the fact that twelve unions bargain nationally for railway employees. Rail employees are the highest paid in all organized labor; pay and benefits average between \$47,000 and \$54,000 per year. As a result, labor costs account for 45% of railroad overhead.<sup>6</sup>

These two very different modes of transportation have much in common. They serve the same customers but fulfill different market

needs. For the most part, both are deregulated and labor-management relations are a significant part of doing business.

### THE UNIONS

A discussion of labor unions must begin with a short history of why workers first organized and how specific unions began.

Prior to the 19th century, there was no real labor movement as we think of it today. This lack of an organized movement resulted from the following:

First the market for employee's products was both local and essentially noncompetitive. Workers were thus allowed close social ties with the owner, often performing their work in the owner's home. In addition, workers could maintain a comparatively relaxed pace of production in such an atmosphere.<sup>7</sup>

Second, both the laws of supply and demand and government regulations of the period allowed employees a large measure of job security. Labor of all kinds, and particularly skilled craftsmen, was in short supply in the colonies. A series of colonial labor laws calling for apprenticeship service prior to many kinds of employment and carefully outlining the conditions which employees could be discharged offered further protection to the work force.<sup>8</sup>

Third, the existence of ample, cheap land in the West meant that the dissatisfied worker could always move on should either local adversity or the spirit of adventure strike him. Many workers did migrate to the expanding frontier, allowing even more advantageous employment conditions for those who remained.<sup>9</sup>

Finally the low ratio of labor to natural resources in the frontier nation helped ensure that price increases would lag behind wage increases.<sup>10</sup>

With the turn of the century and the continued expansion to the west, also came the industrial revolution. The increased network of transportation systems - railroad, canal, and turnpike - enlarged the manufacturer's market. As markets increased, so did competition and the pressure to find cost cutting devices. Some employers decreased labor costs by introducing women and children to the work place, reducing wages, increasing the work standards, and increasing the hours in the work day at no increase in pay.<sup>11</sup>

These early working conditions reflected the attitude of government. "Regulation was almost totally lacking, on the theory that the greatest social benefits would accrue if no public interference was attempted. Employment was irregular, and wages became generally competitive. In many cases, inexperienced employees were preferred to the more experienced craftsmen, who found it difficult to adapt themselves to machine methods."<sup>12</sup>

Living and working conditions in the factory cities were in many instances unsanitary and unsafe. Housing was inadequate, and children were being put to work when they should have been learning to read and write. Any attempt on the part of the employees to bargain collectively was considered a crime.<sup>13</sup> The welfare and the future of the American worker were almost entirely in the hands of the factory owners.

The first railroad unions began forming in the mid 1800s. The first was the Brotherhood of Locomotive Engineers in 1863, followed by the Order of Railway Conductors in 1868, the Brotherhood of Locomotive Firemen in 1873, and the Brotherhood of Railroad Trainmen in 1883. Of these four only the Engineers formed for the express purpose of collective bargaining; the other three were formed as fraternal organizations to protect members and families.<sup>14</sup> From this beginning, today's railroad unions have evolved. Currently, the following twelve unions represent rail workers on a national basis:

- American Train Dispatchers Association
- Brotherhood of Locomotive Engineers
- Brotherhood of Maintenance of Way Employees
- Brotherhood of Railroad Signalmen
- International Association of Machinists
- International Brotherhood of Boilermakers and Blacksmiths
- International Brotherhood of Electrical Workers

International Brotherhood of Firemen and Oilers  
Sheet Metal Workers International Association  
Transportation Communications Union  
Transportation Communications Union: Carmen Division  
United Transportation Union

Considering that a railroad may deal with one or all of these unions illustrates what a complicated exercise labor relations can become.

The International Brotherhood of Teamsters was founded in 1903 and came to be one of the largest and most powerful labor organizations in the United States. Since 1980 and the deregulation of the trucking industry, the Teamsters' power has been significantly eroded. As a result of declining membership and charges of corruption and racketeering, they no longer have the political power they once had. Having said that, one must not believe that the Teamsters are no longer a force to be taken seriously. They still have a membership of 1.5 million working men and women and represent over 200,000 truck drivers.<sup>15</sup> They are the primary union in the trucking industry and in all probability will remain so in the future.

The power of unions in America is two fold. They have direct influence over their members, loyal, dedicated workers who owe their benefits and their standard of living to union activity.

Additionally, unions wield a great deal of political power through lobbying efforts in Congress. Labor still controls a huge voting block and consequently has a strong voice with our elected representatives. This political power manifests itself in labor legislation. As previously stated, the most dramatic form of union power is the strike. A nationwide or industry-wide work stoppage can cripple an economy. If the industry happens to be the transportation industry, the strike will impact on virtually every aspect of American life. During periods of national crisis, strikes can be even more disastrous since national survival can be threatened.

#### WORK STOPPAGES

Throughout our history strikes have taken place on a routine basis. Times of national crisis have been no exception. Indeed, crisis situations have sometimes been viewed as the best time to strike; the additional leverage provided by the emergency was seen as being beneficial. This section will identify selected transportation strikes, threatened strikes, or other labor unrest during time of war and how each was dealt with.

In July of 1864, the Philadelphia and Reading Railroad in eastern Pennsylvania was seized by the War Department for a period of 10 days as a result of the strike by members of the Brotherhood

of the Footboard. The seizure was authorized by the Railroad and Telegraph Control Act of 1862.<sup>16</sup>

Threats of strikes by the railroad brotherhoods in 1917 lead to the seizure of 385 major railroads and their subsidiaries; 220 switching and terminal lines; 1,434 plant facility roads and 855 independent short-line railroads. The seizure lasted from December 28, 1917 until March 1, 1920. The seizure was authorized by The Army Appropriation Act of 1916 which allows the President to seize and operate systems of transportation in time of war.<sup>17</sup>

The Toledo, Peoria and Western Railroad was seized on March 22, 1942 and returned to private ownership on October 1, 1945. The authority for the seizure was once again the Army Appropriation Act of 1916. The reason for seizure differed from previous labor related seizures in that the company failed to comply with a directive order of the National War Labor Board to arbitrate a labor dispute.<sup>18</sup>

Because of noncompliance by the Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Switchmen's Union of North America, with a recommendation of the Railway Labor Act emergency board and a presidential offer of arbitration, 750 railroad companies were seized on December 27, 1943 and held until January 18, 1944. The Army Appropriation Act of 1916 was also used as the authorizing legislation.<sup>19</sup>



On August 12, 1944 the War Labor Disputes Act of 1943 and the Army Appropriation Act of 1916 were used to seize 103 trucking firms operating west of the Mississippi river for failing to comply with a directive from the National War Labor Board to come to an agreement with the International Brotherhood of Teamsters. The companies were returned on November 1, 1945.<sup>20</sup>

The last transportation seizure in the Roosevelt administration was the Bingham and Garfield Railway in Utah. The property was seized for noncompliance with a recommendation of the Railway Labor Act emergency board by the Brotherhood of Locomotive Firemen and Enginemen. Again, the War Labor Disputes Act and the Army Appropriation Act were cited as the authority.<sup>21</sup>

The Truman administration wasted no time in applying the seizure powers. On May 24, 1945, 1,700 trucking firms were seized because of noncompliance by Local 705, Chicago Truck Drivers, Chauffeurs and Helpers Union (independent) and members of the International Brotherhood of Teamsters with a directive order of the National War Labor Board.<sup>22</sup>

On August 24, 1945 another transportation company was seized because of noncompliance with a recommendation by a Railway Labor Act emergency board. Because of the failure of the Brotherhood of Locomotive Firemen and Enginemen to abide by the recommendation, the Illinois Central Railroad and its subsidiary, Yazoo and

Mississippi Valley Railroad was seized under the auspices of the War Labor Disputes Act and the Army Appropriations Act of 1916.<sup>23</sup> Problems with the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen caused 337 additional railroad companies to be seized on May 17, 1946. As in the previous case the reasons, as well as the authority, for seizure were the same.<sup>24</sup>

During the Korean war, between July 1950 and May 1952, President Truman seized 199 railroad companies for noncompliance with emergency recommendations or threatened strikes by the Switchmen's Union of North America, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors, and the United Railroad Workers. Once again the authority for the seizures was the 1916 Appropriations Act which had been extended beyond the formal end of World War II until July 3, 1952. This extension was necessary since the transportation seizure provision of the 1916 Act only applies in time of war.<sup>25</sup>

Between 1967 and 1972, the Viet Nam war years, there were 31,204 strikes in the United States involving over 16 million workers.<sup>26</sup> While the majority of these strikes were not in the transportation industry, the pattern remains clear. History clearly shows that unions will strike as they see fit, without regard to the international situation. The transportation unions have been no exception.

Because of the public dependency on continued transportation services and because of the negative economic impact of major transportation strikes, there has been limited tolerance for such strikes in peace time and much less tolerance in time of war. Because of this public attitude toward transportation strikes there are several federal procedures for postponing or preventing strikes.<sup>27</sup>

The remainder of this paper will discuss past and current legislation for dealing with strikes in the transportation industry, the adequacy of current legislation as it applies to emergency situations, and any possible recommendations for improvement.

#### LABOR LEGISLATION

Labor law in the United States has been evolving since the early 1800s. The early determinations as to the lawfulness of union activity were made by the courts and not Congress. The reference point for judges in the 19th century was English Common Law. Under common law precedents, labor unions were considered to be criminal conspiracies and were treated as such until the mid 1800s. Between 1806 and 1842, eighteen trials took place resulting in the conviction of unions and their members of engaging in criminal conspiracies. In 1842 the Supreme Judicial Court of Massachusetts overturned a lower court decision and effectively ended the criminal conspiracy doctrine as it applied to unions.

The actions of unions were still challenged in civil proceedings, however.<sup>28</sup>

Following a period of horrific labor unrest during the 1870s and early 1880s in which hundreds of people were killed, Congress began to act. The series of laws enacted frame our national labor policy and define our limits in dealing with labor unions. This section will discuss the following laws as they apply to unions:

- o Arbitration Act of 1888
- o Erdman Act of 1898
- o Sherman Antitrust Act of 1890
- o Newlands Act of 1913
- o Adamson Act of 1916
- o Army Appropriation Act of 1916
- o Transportation Act of 1920
- o Railway Labor Act of 1926
- o National Labor Relations Act of 1935
- o Taft-Hartley Act of 1947
- o Defense Production Act of 1950

Congress' first attempt to improve labor management relations was the passage of the Arbitration Act of 1888. The law provided for voluntary arbitration only if both parties agreed. In the event of a railroad dispute, the President could appoint a board of investigation. In the ten year life of the Arbitration Act, the

provision for voluntary arbitration was never used and the special investigation board was used only once. It became apparent that some type of formalized method for arbitrating disputes was required.<sup>29</sup>

The next attempt came in 1898 with the Erdman Act which was designed to provide for both mediation and arbitration. Under the provisions of the law, either the railroads or the unions could ask for government assistance if their negotiations failed to produce a settlement. If agreed to by both parties, the law allowed for binding arbitration. Neither the railroad nor unions looked favorably on third parties deciding their fate; as a result the Erdman Act met with only limited success.<sup>30</sup>

In 1890, between the Arbitration Act and the Erdman Act, the Sherman Antitrust Act was passed. While it was meant to stop the abuses of big business, it was originally more successful against organized labor. It allowed the government to seek injunctions when union activity was believed to be in restraint of trade. These injunctions were normally used to stop picketing, trespass, boycotts, and the use of force.<sup>31</sup>

In 1913, the Erdman Act was amended by the Newlands Act. This legislation came about as a result of a threatened strike by conductors and trainmen who refused to accept arbitration under the Erdman Act. The act established a permanent mediation board and a permanent voluntary arbitration board. Until its replacement by

the Transportation Act of 1920, the Newlands Act was used successfully in 146 of 148 cases entertained by the mediation and arbitration boards.<sup>32</sup>

With a national strike on the horizon and the possibility of America becoming involved in the war in Europe, President Wilson addressed both houses of Congress on August 29, 1916. "He lamented that there were no resources at law at his disposal for compulsory arbitration, and he sought legislation granting the eight hour day in order to prevent a national emergency".<sup>33</sup> Congress acted and two days before the strike was scheduled to take place the Adamson Act was signed into law. At the same time, President Wilson also recommended that the Newlands Act be amended to make railroad strikes illegal pending the outcome of an investigation by a government commission. Congress did not approve the recommendation.<sup>34</sup> This tendency to avoid compulsory arbitration and anti-strike legislation by the Congress has continued to the present.

The Army Appropriation Act of 1916 is interesting in that it authorizes seizure of transportation systems in time of war. Admittedly, this is a Presidential war powers act intended to insure continued production by the industrial base. It was brought into play by President Wilson when another national railway strike threatened and all railroads were subsequently federalized until 1920. The act does not, however preclude strikes; President Wilson

obtained a pledge from the unions of no further strikes for the duration of the war. The Wilson administration, in turn, supported labor in its traditional demands. This particular law is still valid and was used in World War II and the Korean War. Since it applies only in time of a declared war, it was continued by special legislation to carry through the Korean conflict.<sup>35</sup>

After the return of the railroads to private ownership, there was considerable support to amend the Newlands Act to include compulsory arbitration. Indeed, legislation was introduced which would have required compulsory arbitration, as well as making strikes by rail employees illegal. The final compromise legislation was Title III of the Transportation Act. In this Act, government was given a greater role in fixing wages and working conditions, however, the emphasis on mediation and voluntary arbitration was even weaker than in the Newlands and Erdman acts. As in the past, rail strikes continued and the Transportation Act was found to be lacking. In December of 1924, President Coolidge asked both management and labor to jointly propose legislation which would reduce the threat of railroad strikes. The result was the Railway Labor Act of 1926 (RLA). Repealing Title III of the Transportation Act, the Erdman and Newlands Acts, the RLA remains applicable to railway labor disputes today.<sup>36</sup>

The RLA separates disputes as major and minor. Minor disputes are those which arise from interpretation of existing contracts and

are settled by the National Railroad Adjustment Board; the decisions of the board are final. Major disputes, those involving new contracts, are handled by a multi-step process which involves collective bargaining between parties; a National Mediation Board which attempts to gain agreement between the parties; requests to submit to binding arbitration; the establishment of a Presidential Emergency Board to study the facts; Board recommendations made to the President; and finally a 30 day cooling off period, if the recommendations are not accepted by the parties, after which the union may strike.<sup>37</sup>

With the exception of the airline industry, which is also covered by the RLA, all other labor-management relations, to include motor carriage, are governed by the National Labor Relations Act (Wagner Act) and the Taft-Hartley Act.

The Wagner Act codified and banned five types of unfair labor practices: interfering with the right to organize; interfering with the formation or administration of unions; using discriminatory hiring practices with regard to union membership; discriminating against employees who have filed an unfair labor practice charge; and refusing to bargain collectively with duly chosen employee representatives. Additionally, the act set forth the principle of majority rule for the selection of employee representatives. It also created the National Labor Relations Board which enforces the provisions of the act.<sup>38</sup>



The Taft-Hartley Act established both a list of unfair employee practices and a procedure for settling disputes. Under the act, a 60 day notice must be given by a party wishing to change or terminate conditions of employment. During the 60 day period, the Federal Mediation and Conciliation Service, also created by the act, attempts to bring both sides together. If no agreement is reached in the 60 day period, the union is free to strike.<sup>39</sup>The act also contains an emergency provision which grants the President additional powers.

When, in the opinion of the President, a threatened or actual strike or lock out in an entire industry or substantial part of an industry threatens the national wellbeing, he may appoint a board of inquiry to investigate the dispute and direct the Attorney General to seek an 80 day injunction, ordering workers back to work. If, in the 80 day period, the dispute is not settled, only Congressional action can prevent the strike.<sup>40</sup>

The last law to be discussed is the Defense Production Act of 1950 (DPA). Originally this act contained a section dealing with the settlement of labor disputes; it was terminated, however, in 1953. The DPA is the foundation of our national mobilization policy and in the early 1970s was used to stop three transportation strikes.<sup>41</sup> According to Federal Railroad Administration officials, the current version of the act does not appear to override collective bargaining. It is doubtful, therefore, that it could be used to stop a threatened strike in the future.

## ADEQUACY OF THE LEGISLATIVE OPTIONS

Our national policy toward organized labor has evolved over the years from distrust and condemnation to one of acceptance and protection. Federal laws protect the rights of the worker to organize, to bargain collectively and to strike. Instead of considering every strike a criminal conspiracy we now consider it part of doing business. Our two major labor laws, the Railway Labor Act and the Taft-Hartley act mediate and arbitrate disputes rather than seek immediate injunctions and back to work orders.

There is no law that allows the President to order strikers back to work in the event of a national emergency. Both procedure and precedence exist for ad hoc legislation passed by the Congress to be used to order strikers back to work. The 1991 nationwide rail strike was stopped in exactly this manner. After all measures in the RLA had been exhausted, the rail unions struck. The strike lasted exactly one day, the length of time it took Congress to pass legislation ordering the strikers back to work and mandating further mediation between management and labor. In that 24 hour period the administration estimated that \$50 million was lost.<sup>42</sup> If the peacetime cost for a one day strike can be \$50 million, what would the daily cost be during a national emergency?

There are three basic options available to the administration

to cope with an actual or threatened strike during an emergency:

- o Non-binding mediation and arbitration.
- o Seizure, if the emergency results in declared war.
- o Ad Hoc legislation.

As our peacetime labor laws now exist, non-binding mediation and arbitration are the methods for settling disputes between management and labor. In a world without the threat of national emergencies or crises, this method for settling disputes is adequate and prudent. Since the rights of individuals are protected, the sale of one's labor is also protected. Therefore our laws guarantee any worker the right to bargain collectively and to strike. Both the RLA and the Taft-Hartley Act seek to avoid strikes through mediation and arbitration. They both allow for mandatory "cooling off" periods; in the final analysis, however, both defer to the union's right to strike. Even the National Emergency Provisions title of the Taft-Hartley Act does not make arbitration binding, nor does it allow for permanent injunctions. In the end, the union remains free to strike.

The threat to our national survival is never more pronounced than in time of war. Over the years the Congress has recognized this and has passed seizure and anti-strike legislation specifically for wartime operations. The Army Appropriation Act of 1916, as discussed earlier in this paper, authorized seizure of

transportation systems and has been used in three wars to deal with striking workers as well as other threats to the war effort. During the Second World War, the War Labor Disputes Act was passed in 1943. This temporary legislation authorized the President to seize mines and war plants in labor disputes and made strikes in seized facilities a criminal act.<sup>43</sup> Government seizure by itself did not stop labor unrest in the seized business. In 49 of the 71 war time seizure cases in our history, either labor, management or a combination of labor and management contested labor relations rulings made as part of the seizure.<sup>44</sup>

Unions have not stood idly by and allowed anti-strike legislation to be passed without protest. Union demands to continue or restore the right to strike in war time were presented to Congress in the Civil War, World War II, and the Korean War. In each instance Congress did not support the demands. Unions were successful, however, in delaying adoption of anti-strike legislation during World War II for two years.<sup>45</sup> On the whole, Congress appears to have recognized the strength of public opposition to strikes in wartime, and to national transportation strikes anytime. But in deference to the unions, it has often added provisos to antistrike (seizure) statutes, stating that nothing shall be done by the president under these statutes 'inconsistent' with the permanent labor laws guaranteeing the right to strike".<sup>46</sup>

During peacetime, our labor laws rely on government assisted mediation and arbitration to settle labor disputes. When this fails, and the work stoppage is serious enough, the President's only recourse is to seek ad hoc legislation to end the strike. The last two railroad strikes in 1991 and 1992 were ended in this manner. The legislation was not enacted, however, until after the strike was underway. While both strikes were ended in short order, the rail system did stop and confusion and monetary loss did result. The mood of Congress has been to take no action until there is proof that labor and management will not settle the dispute on their own. Unfortunately, that proof takes the form of some type of work stoppage.

Successful ad hoc legislation requires that both houses of Congress and the President support ending the strike. Given the way our Congress has worked in the past, it is conceivable that strike ending legislation may not be passed. At best, one must always accept a degree of risk when depending solely on ad hoc legislation to solve a problem.

#### CONCLUSIONS AND RECOMMENDATIONS

Our labor legislation has taken two distinct paths, either strictly peacetime or strictly wartime. There is no in between.

The intent of peacetime legislation is to allow labor and management to work out their differences with government assisted mediation and arbitration. In the end, the right to strike is an individual right guaranteed under the law.

Labor unions in the defense transportation industry, as well as other industries, have a long history of strikes and walk outs during time of war. There are indications of support for a strong national defense from the AFL-CIO. The president of the Transportation Communications Union, when asked about the possibility of a rail strike during the Gulf War, said: "I don't foresee a walkout....Unions want to be a happy part of the war effort".<sup>47</sup> In looking at the entire book of labor's propensity to strike when the demand for labor is at its highest, I do not believe we can put our trust in this latest short chapter.

There is risk involved in relying solely on ad hoc legislation to avoid strikes during emergencies. Additionally, our habit has been to let the strike occur before seeking any legislative solution. In time of a national emergency, disruption in the transportation system must be avoided.

Organized labor has made serious impacts in the national transportation system in times of both peace and war. There is a gap in our mobilization legislation which can allow labor strikes to disrupt critical strategic transportation services. Our labor

to disrupt critical strategic transportation services. Our labor legislation is adequate for peacetime operations and, for the most part, has been adequate for wartime operations.

In order to correct the shortcoming in our mobilization program, the Department of Defense should seek legislation to give the President greater emergency powers in dealing with work stoppages during national emergencies. Such legislation should allow the President to issue a "remain at work order" before a strike occurs. The act should also allow for mandatory, binding arbitration to settle the dispute and effect both management and labor, without favoring either.

1. U.S. Industrial Outlook 1992, pp. 40-5-40-15.
2. Military Traffic Management Command, 1992.
3. U.S. Industrial Outlook 1992, pp. 40-5-40-15.
4. John D. Schulz, "Teamsters, trucking management near accord on 3-year master contract," Traffic World, 225 (March 11, 1991), p. 72.
5. Ibid., p. 72.
6. U.S. Industrial Outlook 1992, pp. 40-5-40-15.
7. Arthur A. Sloane and Fred Whitney, Labor Relations (New Jersey, Prentice-Hall, Inc., 1985), pp. 56-57.
8. Ibid., pp. 56-57.
9. Ibid., pp. 56-57.
10. Ibid., pp. 56-57.
11. Ibid., pp. 56-57.
12. Dale Yoder, Personnel Management and Industrial Relations (New Jersey, Prentice-Hall, Inc., 1956), p. 40.
13. Ibid., p. 40.
14. Frank N. Wilner, The Railway Labor Act and the Dilemma of Labor Relations (Omaha, Simmons-Boardman Books, Inc., 1991), p. 26.
15. Kevin G. Hall, "Countdown Begins in Direct Vote for Teamsters Union Presidency," Traffic World, 228 (Dec. 16, 1991), pp. 14-15.
16. John L. Blackman, Presidential Seizure in Labor Disputes (Cambridge, Harvard University Press, 1967), pp. 257-282.
17. Ibid. , pp. 257-282.
18. Ibid., p. 261.
19. Ibid. , p. 264.
20. Ibid. , p. 266.
21. Ibid. , p. 270.
22. Ibid. , p. 272.
23. Ibid. , p. 275.



24. Ibid. , p. 277.
25. Ibid. , pp.279-286.
26. Bernard and Susan Rifkin, American Labor Sourcebook (New York, McGraw-Hill Book Company, 1979), p. 12-22.
27. Robert C. Lieb, Transportation (Reston, Va., Reston Publishing Co., 1985), p. 367.
28. Wilner, pp. 2-8.
29. Ibid. , p. 31.
30. Lieb, pp. 369-370.
31. Wilner, pp. 10-11.
32. Ibid. , pp. 34-35.
33. Ibid. , p. 36.
34. Ibid. , pp. 36-37.
35. Ibid. , pp. 38-39.
36. Ibid. , pp.42-46.
37. Donald V. Harper, Transportation in America (New Jersey, Prentice Hall, Inc., 1982), pp. 342-343.
38. Sloane and Witney, p. 101.
39. Lieb, p. 373.
40. Ibid. , p. 373.
41. Wallace E. Stickney, "The Defense Production Act: Its Importance in an Uncertain World," Journal of Civil Defense, (February, 1991), p. 13.
42. Congressional Quarterly Almanac (Washington, D.C., Congressional Quarterly Inc., 1991), Vol. XLVII, pp.154-155.
43. Blackman, p. 68.
44. Ibid. , pp. 299-311.
45. Ibid. , p. 68.
46. Ibid. , p. 69.

47. Ira Rosenfield, "PEB Recommends Sweeping Changes to Settle Rail Contract Impasse," Traffic World, No.3, Vol.225, (January 21, 1991), p. 11.

## BIBLIOGRAPHY

1. Aitchison, Clyde B., " Wartime Control of American Railways," Virginia Law Review, Volume 26, May, 1940.
2. Blackman, John L., Presidential Seizure in Labor Disputes, Cambridge, Harvard University Press, 1967.
3. Bernstein, Irving, Enarson, Harold L., and Fleming, R.W., Emergency Disputes and National Policy, New York, Harper and Brothers Publishers, 1955.
4. Congressional Quarterly Almanac, Washington, D.C., Congressional Quarterly Inc., 1991.
5. Defense Production Act of 1950 as Amended (50 U.S.C. App. 2061, et seq.).
6. Hall, Kevin G., "Countdown Begins in Direct Vote for Teamsters Presidency," Traffic World, 228, December 16, 1991.
7. Harper, Donald V., Transportation in America, New Jersey, Prentice Hall Inc., 1982.
8. Lieb, Robert C., Transportation, Reston, Va., Reston Publishing Co., 1985.
9. Rifkin, Bernard and Susan, American Labor Sourcebook, New York, McGraw-Hill Book Company, 1979.
10. Rosenfield, Ira, "PEB Recommends Sweeping Changes to Settle Rail Contract Impasse", Traffic World, 225, January 21, 1991.
11. Schultz, John D., "Teamsters, Trucking Management Near Accord on 3-Year Master Contract", Traffic World, 225, March 11, 1991.
12. Sloane, Arthir A. and Whitney, Fred, Labor Relations, New Jersey, Prentice Hall, Inc., 1985.
13. Stickney, Wallace, E., "The Defense Production Act: Its Importance in an Uncertain World", Journal of Civil Defense, February, 1991.
14. U.S. Industrial Outlook, Washington, D.C., U.S. Department of Commerce, 1992.
15. Wilner, Frank N., The Railway Labor and the Dilemma of Labor Relations, Omaha, Simmons-Boardman Books, Inc., 1991.
16. Yoder, Dale, Personnel Management and Industrial Relations, New Jersey, Prentice Hall, Inc., 1956.