

# Reforming Taft-Hartley to keep transportation lifelines open

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Statement Introducing Emergency  
Transportation Disputes Act of 1973  
By U. S. Senator Hiram L. Fong  
In the United States Senate  
Wednesday, January 31, 1973

REFORMING TAFT-HARTLEY TO KEEP TRANSPORTATION  
LIFELINES OPEN

Mr President, my State of Hawaii has just passed through an 18-month period, from mid-1971 to the end of 1972, in which, for one day out of every three, our vital ocean lifeline to the West Coast of the United States was cut off by labor-management disputes outside Hawaii which closed down the docks and idled the ships. Hawaii's eight hundred thousand people were in the classic position of being held hostage by faraway disputes for which they were in no way responsible.

My colleagues know that the Island State of Hawaii is anchored in the Pacific Ocean, 2,500 miles from the West Coast. When the ships no longer call at our ports, there is absolutely no alternative form of surface transportation. No trucks, trains, cars, buses, nor any other means of transport on the earth's surface are available. Quite simply, that is why a shipping strike is a devastating blow to my State.

The dimensions of our situation become clear by imagining Washington, D. C., surrounded on all sides by such an immense water barrier, empty of American ships. Imagine that Washington's only supply line is by aircraft starting their flights at least as far away as Los Angeles, aircraft capable of carrying only a tiny fraction of the exports and imports essential to sustain the health, safety and economy of this community.

For six of the 18 months of which I speak, this was Hawaii's experience.

With our ocean shipping service almost completely severed, we could only turn to air cargo, a strictly limited option. As I suggested in my analogy with Washington, the sheer volume of East and West bound shipments necessary to sustain the people and economy of Hawaii far outstrips available air cargo capacity. Ships transport an estimated 99% of the total freight between Hawaii and the U. S. Mainland -- the food, medicine, automobiles, parcel post, clothing, industrial products, cattle feed and other imports essential to modern living, and the pineapple, sugar, textiles and other exports vital to Hawaii's economic health.

Air transport normally carries an estimated 1% of the total cargo tonnage between Hawaii and the Mainland. When shipping is tied up and air transport becomes the only alternative, it has only a capacity to handle at most between 2% and 2-1/2% of the normal freight tonnage. Hawaii must then forego the other 97%.

Commencing July 1, 1971, Hawaii's ocean lifeline was severed for 134 days, when a contract dispute involving 13,500 longshoremen on the West Coast closed down the docks from Seattle to San Diego. One hundred days passed before a Taft-Hartley injunction could be obtained on the ground of national emergency. Despite two voluntary extensions of the injunction period by labor and management, however, Taft-Hartley failed to produce a settlement.

The strike therefore began again on January 17, 1972. Again days and weeks went by with settlement always tantalizingly close but never in hand. As a last resort, the President asked Congress to pass a bill requiring compulsory arbitration of the West Coast strike. This was done, and, after the President signed the bill but before it could be put into effect, the Pacific Mari-

time Association and the West Coast International Long-shoremen's and Warehousemen's Union reached an agreement.

Three more times last year our ocean shipping lifeline was cut -- by a 2-1/2 day work stoppage on the Hawaii docks in October and later by 41-day and one-day strikes by the Masters, Mates and Pilots on the West Coast.

Hawaii was badly hurt by these events. During the 134-day West Coast strike, unemployment rose to 6.5%, its highest level since Statehood. Because our imports and exports dropped precipitously, workers in all sections of our economy, from the construction industry to retail trade, were laid off or put on shortened workweeks. Merchants unable to resupply and short of capital closed their doors. State tax collections dropped. Shortages became widespread, and staples disappeared from grocers' shelves. Prices increased, reducing purchasing power and depressing economic growth and activity.

Business, investor and public confidence was further shaken by the shorter strikes which followed, particularly the 41-day West Coast Masters, Mates and Pilots

tieup which by immobilizing some 40 vessels on the West Coast and in Hawaii helped bring about additional business failures.

Again and again during longshore and maritime disputes on the Mainland, therefore, the people of my State became hostages because of Hawaii's geographical position in the mid-Pacific Ocean and our heavy dependence on ocean shipping.

But the people of my State have also found themselves held hostage during these strikes because existing law could not provide an effective response to the emergency which arises when Hawaii loses its essential transportation services. Nor could the law ultimately provide more than the Taft-Hartley 80-day cooling-off period as a vehicle for settlement.

For the record, I should note at this point that Taft-Hartley injunctions have failed in no less than nine of the 12 maritime and longshore disputes in which they have been used, a dismal record.

Nothing can be done to escape or change the facts of geography or commerce, of course, but action can be taken by this Congress, and should be taken by this Con-

gress, to reform and extend the statutory remedies available in these emergency disputes in the transportation industry.

The lesson I have drawn from Hawaii's experience is that the Taft-Hartley Act must be amended with regard to emergency disputes in the transportation industry to permit (1) an extension of the Taft-Hartley cooling-off period; (2) partial operation of the affected industry; and (3) a procedure for guaranteed settlement of strikes and lockouts.

There is no provision for guaranteed settlement under Taft-Hartley at this time. The 80-day injunction and last-offer balloting procedures which accompany it do not assure settlement. Out of 32 Taft-Hartley emergency disputes, 14 were not resolved before expiration of the cooling-off period, and in nine of these, all in the maritime or longshore industries, the strike then resumed. At that point, the public interest was without any remedy or defense, short of Congressional action. It is clear to me that in emergency disputes in the transportation industry, upon which our intermeshed economy is so heavily dependent, the public interest requires that the President have the option of adopting a course guaranteeing settlement.

Guaranteed settlement, partial operation and the back-to-work injunction must of necessity be made available also in regional as well as in national transportation emergency disputes and in disputes depriving any State of essential transportation services.

The bill which I introduce today, the Emergency Transportation Disputes Act of 1973, meets these objectives. I make this proposal as one who is deeply committed to the principle of collective bargaining between labor and management, and as one who is equally committed to the public interest, to the general welfare of all of our citizens. On those occasions when collective bargaining, conciliation and other normal processes have failed to settle labor-management disputes in the transportation industry, then in the public interest, for the public good, something else must be done.

My bill is generally based upon crippling strikes legislation which was introduced on a number of occasions in the last Congress, in three instances with myself as a co-sponsor. Twice the substance of these bills was offered as an amendment to pending legislation on the Senate floor, once in November 1971 to amend an economic stabiliza-

tion bill and once last February to amend President Nixon's compulsory arbitration bill to end the West Coast dock dispute. On both occasions the amendment was tabled after vigorous debate, although in the second instance by a margin of just three votes, 42-39.

The Emergency Transportation Disputes Act of 1973 is premised on the failure of present procedures for dealing with emergency disputes in the transportation industry, as exemplified by the recent shipping strikes cutting essential services to Hawaii and the manifest public interest in securing reform.

It amends Sections 206 and 208 of the Taft-Hartley Labor -Management Relations Act to make the familiar 80-day national emergency dispute injunction available also (1) if there is an imperilment of the health, safety or economy of the Nation, (2) if there is an imperilment of the health, safety or economy of a substantial sector of the Nation, or (3) if any State is deprived of essential transportation services. The substantial interruption of transportation services between the West Coast of the United States and the State of Hawaii is expressly stated to constitute a deprivation of essential transportation services to my State.

By amendment to Section 212, the airline and railroad industries, now subject to the dispute-resolution procedures of the Railway Labor Act, are brought under Taft-Hartley at the discretion of the President. As my colleagues are aware, Congress has had to be asked over and over again to legislate settlement of strikes in the railroad industry, because of the inadequacy of existing machinery under the Railway Labor Act.

My bill goes on to provide the President with three new alternatives which he may follow to promote settlement of emergency disputes in the five transportation industries -- railroads, airlines, maritime, longshore, and trucking. These may be followed in such sequence as the President deems appropriate following the failure of an 80-day cooling-off period to bring about a settlement.

The first new alternative would be an extension of the original 80-day cooling-off period by up to 30 additional days, to give the parties additional time to settle.

Secondly, my bill would permit up to 180 days of partial operation in lieu of a full strike or lockout in all or a substantial portion of an industry. This action would be taken to avoid imperiling the health, safety or economy of the Nation

or a substantial sector of the Nation, or depriving any State of essential transportation services. In the event of a West Coast dock strike, for instance, this procedure could be used to provide emergency shipping services to Hawaii.

The third option available to the President under my bill would be the choice of the final offer selection process, or last best offer, to guarantee settlement. Under this procedure, the President directs labor and management each to submit to the Secretary of Labor a final offer constituting a complete collective bargaining agreement resolving all issues involved in the dispute. Each party may at the same time submit one alternative final offer. The Secretary of Labor shall transmit the offers to the other parties simultaneously.

If a party or parties refuse to submit a final offer, the last offer made by such party or parties during previous bargaining shall be deemed that party's or parties' final offer.

After receipt of each other's final offers, the parties shall bargain collectively for five days, during which period the Secretary of Labor may act as a mediator. If no settlement is reached before the end of this

period, the parties may within two days select a three-member panel to act as the final offer selector. If the parties are unable to agree on the composition of the panel, it will be appointed by the President.

The panel shall have thirty days from the time the President directed the parties to submit final offers in which to conduct hearings and reach its determination as to which is the most reasonable of the final offers submitted by the parties. During this time operations will continue in the affected industry and employees will continue to work and draw their pay. Strikes, lockouts and similar activity are prohibited during this period.

The most reasonable offer selected by the panel will serve as the contract between the parties, unless the selection by the panel is found arbitrary or capricious by a Federal court. The panel cannot compromise or alter the final offer it selects, but must pick one or the other intact.

In making its selection, the final offer selection panel will be governed by such factors as past collective bargaining contracts between the parties, comparative wages, hours and conditions of work among similar employees and in industries in general, views obtained in the hearings conducted by

the panel, and other elements normally considered in the determination of wages, hours and conditions of employment. The public interest is specifically set forth as a consideration to be weighed by the final offer selection panel.

The effect of the final offer selection procedure, or last best offer, I believe, will be to draw the parties together in their negotiating positions rather than to drive them apart, as often happens in arbitration.

Final offer selection is not compulsory arbitration. Under compulsory arbitration, the arbitrator is generally thought to split the parties' differences down the middle, negating any incentive to be reasonable and to compromise. In fact, the incentive is quite the opposite, toward establishing extreme positions and extreme demands. Bargaining positions tend to become more rigid when the parties to the dispute know that an arbitrator will ultimately split their differences.

Final offer selection, or last best offer, avoids this problem by requiring the panel to select the single most reasonable final package. This provides the needed positive incentive for compromise and reasonableness, since each party knows that the most reasonable offer will be selected intact. The parties cannot risk submitting extreme

or unreasonable proposals, for fear of having the total offer rejected and the offer of the other party selected.

In short, negotiations between the parties become centripetal, drawing inwards toward agreement, rather than centrifugal, moving outwards away from resolution of their differences.

Hawaii has recently suffered more than any other State from the absence of the emergency transportation dispute reforms set forth in the bill which I introduce today. My colleagues will recognize, however, that a sudden cessation of transportation services can occur anywhere in the Nation, and the inevitable result will be human stress and economic dislocation.

A number of contracts in the transportation industry are due to expire in the immediate future. These include the nationwide Teamsters contract and the West Coast longshore contract on June 30th. Also coming up in June are the railroad union contracts and ground crew contracts for one of our major airlines. Each of these events carries with it the potential for a transportation emergency. I respectfully request, therefore, that the Committee to which my bill is referred schedule prompt hearings on this legislation.

It is my firm conviction that the national public interest requires and would be well served by enactment of the Emergency Transportation Disputes Act of 1973 by the Congress.

Mr. President, I send this bill to the desk for referral to the appropriate committee and ask unanimous consent that the text of the Emergency Transportation Disputes Act of 1973 be printed in full in the Congressional Record at this point, to be immediately followed by the text of my January 1973 newsletter to my constituents, which contains an extended analysis of emergency strike proposals which I believe may be of value to a larger audience.