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Lee Pressman

CASE STUDY IN LABOR-MANAGEMENT RELATIONS: MARITIME INDUSTRY—1965

LEE PRESSMAN*

I. GENERAL BACKGROUND

In the summer of 1965, a two-month strike in an important segment of the offshore maritime industry, an industry in which work stoppages have periodically accompanied the termination of collective bargaining agreements,[1] aroused considerable national attention. Public interest was enhanced by the fact that the American merchant marine is the beneficiary of special federal financial support, and any substantial interruption in its operations has a serious impact on the national economy.[2] A stereotype solution commonly urged is further legislation, usually more restrictive and oppressive for the unions which are depicted as the sole culprit. Rarely are the shortcomings of the Government or of management exposed or discussed as a possible cause for the low state of labor-management relations. The purpose of this article is to present a specific case history which may serve as a basis for rational and explicit suggestions, designed to improve what is admittedly a chaotic situation.

Any industry beset with craft unions is subject to more potential difficulties than those commonly confronting the parties where a single industrial form of union prevails. The seagoing personnel of the American offshore merchant marine have been organized almost exclusively on a craft basis. There are separate and distinct unions for the officers which exclude the unlicensed personnel; and each such union is confined to a single officer group, *i.e.*, deck, engine room and radio departments.

The situation is not as clear for the unlicensed. In two instances, all crew members are represented by a single union,[3] while in another,

* A.B., Cornell University, 1926; LL.B., Harvard Law School, 1929; Harvard Law Review, 1927-1929; Member, New York Bar.

1 Injunctions under the Taft-Hartley Act, 61 Stat. 136 (1947), 29 U.S.C. §§ 151-58 (1964), have been issued on 5 occasions over the past 9 years to enjoin threatened or actual strikes in the maritime industry.

2 The Merchant Marine Act of 1936, 49 Stat. 1985, as amended, 46 U.S.C. § 1101 (1964), establishes the basis for operating and construction subsidies; other statutes permit only American flag vessels to operate in domestic trade and guarantee the use of American flag vessels for a minimum percentage of cargo generated under foreign aid programs. Hereafter, reference to subsidized companies shall be confined to those receiving the operating subsidy which reimburses for the difference in wage costs of the American flag vessel as compared with foreign flag vessels operating in the same trade routes. In all, there are 15 companies receiving an operating subsidy for approximately 300 vessels, which amounts to an annual federal payment of $300 million.

3 National Maritime Union and Seafarers Int'l Union, Atlantic, Gulf, Lakes and Inland Waters District.

there are separate unions for the engine, deck and steward operations.[4] Additionally, in certain areas rival unions claim similar jurisdiction, even though both unions are within the fold of the AFI-CIO.[5]

Thus, we have the National Marine Engineers Beneficial Association (MEBA), embracing the licensed marine engineers employed on vessels operating out of the Atlantic, gulf and Pacific coasts. The Masters, Mates and Pilots (MM&P) and the American Radio Officers (ARA) cover respectively the licensed deck and radio officers employed on all three coasts. But the Radio Officers Union (ROU) also claims jurisdiction over radio officers and has separate contracts on all coasts.

For unlicensed personnel, the National Maritime Union (NMU) embraces all such crew members employed by companies operating essentially out of the Atlantic and gulf coasts.[6] Its rival union, the Seafarers International Union (SIU)[7]—Atlantic, Lakes and Inland Waters District—follows the same pattern with those companies with which it has collective bargaining agreements. However, on the Pacific coast, where the SIU has a separate district, there are three distinct autonomous unions, the Sailors Union of the Pacific (SUP), the Marine Firemen, Oilers and Watertenders (MFO&W) and the Marine Cooks and Stewards (MC&S) which respectively represent deck, engine and steward unlicensed personnel.

The mere enumeration of the unions involved should suffice to cause industrial relations jitters. But the difficulty is compounded by a similar, if not a more serious, proliferation on the side of management. For the Atlantic and gulf coasts, there is the American Merchant Marine Institute (AMMI) which is composed primarily of subsidized dry cargo operators[8] and tanker companies. The latter group, however, has its separate organization for labor negotiations known as the Tankers Service Committee. We, also, have the American Maritime Association (AMA) which embraces unsubsidized dry cargo companies[9] and those tanker companies not identified with the Tankers Service Com-

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4 Sailors Union of the Pacific; Marine Cooks & Stewards; and the Marine Firemen, Oilers & Watertenders—all associated with the Seafarers Int'l Union.

5 National Maritime Union and Seafarers Int'l Union claim jurisdiction over unlicensed personnel; the MEBA and the Brotherhood of Marine Officers (BMO) claim jurisdiction over licensed engineers; and the BMO and the Masters, Mates & Pilots claim jurisdiction over licensed deck officers.

6 Within the past few years, the NMU issued a charter to a then unaffiliated organization, the BMO, whose contracts are confined essentially to two companies covering both deck and engine officers.

7 The SIU has an affiliated autonomous union known as the Staff Officers Union, which has contracts with a few companies on the Atlantic and gulf coasts covering the pursers, and a separate affiliated union on the Pacific coast which contracts for similar personnel.

8 Three large and several smaller companies which are members of the AMMI are not subsidized.

9 One large company, which until recently was a member of AMA, is subsidized.

mittee. And, of course, there are some dry cargo or tanker companies not participating in any of the management organizations.

On the west coast, the Pacific Maritime Association (PMA) represents practically all of the dry cargo operators which, with but one exception, are subsidized. The tanker companies on this coast negotiate separately.

The contract pattern is both simple and complicated. Each union customarily has a standard agreement for all of its contracted companies, which may vary only between dry cargo and tanker operations. But the member companies of any one employer association do not invariably have contracts with all the same unions. A specific company may, for one or more crafts, have agreements with unions rival to those with which its fellow association members have collective bargaining contracts.[10]

In 1961 all collective bargaining agreements expired in either June or September. Strikes occurred on both the east and west coasts before new contracts were consummated.[11] The objective sought in those negotiations, and generally achieved with governmental assistance, was to provide all the unions involved with a comparable economic cost package. The specific benefits in each of the newly negotiated agreements may have varied with the preference of the individual union, but the overall cost for each contract was substantially the same. In addition, the unions, with but three exceptions, agreed upon long-term contracts with a common expiration date of June 15, 1965. The MEBA's new agreement for all companies on the Atlantic and Pacific coasts and the MM&P's agreement on the west coast were renewed until June 15, 1964. The SIU entered into a one-year agreement for its Atlantic and gulf coasts operations.

The foregoing pattern was an important achievement for the industry and augured well for future stability. Previously, management had complained that the several unions, with varying expiration dates for their respective agreements, had "rolled" the companies on an ever

10 On the west coast, PMA, as the single employers' association, negotiates in behalf of its members with the separate unions covering all the seagoing personnel. There are no rival unions for the same group of crew members. However, on the Atlantic and gulf coasts, a member of the AMMI, such as the Moore-McCormack S.S. Co., has contracts with the NMU for one portion of its operation and the SIU for another segment, while practically all the remaining members of AMMI deal exclusively with the NMU. On the other hand, practically all the members of the AMA deal exclusively with the SIU, but a few members have contracts with the NMU. To add to the complexity, it should be noted that while all but two members of the AMMI contract with the MEBA and MM&P, those two companies have agreements with the BMO; and at least one large member company does not have any agreement with ARA.

11 These were the subject of two of the Taft-Hartley injunctions, supra note 1. See Seafarers Int'l Union v. Pacific Maritime Ass'n, 304 F.2d 437 (9th Cir.), cert. denied, 370 U.S. 924 (1962); United States v. National Marine Eng'rs Beneficial Ass'n, 294 F.2d 385 (2d Cir. 1961).

escalating process. But the comparable cost packages established for the 1961 round of negotiations combined with a common expiration date for a long-term agreement provided a firm basis for a mature pattern of labor relations.

II. Events Leading to the 1965 Negotiations

Soon after completion of the 1961 negotiations, which had deeply involved the federal government, the initiation of a comprehensive study was announced, to be conducted under the auspices of Professor James Healy of the Harvard Business School.[12] The purpose was to study the many labor-management problems confronting the maritime industry. While it is known that a staff of researchers commenced work and interviewed many officials prominent in the industry, and a comprehensive, impartial study by them could have been of immeasurable assistance in the 1965 negotiations, no public report has been forthcoming.

During 1962-1963, a few small dark clouds appeared which promised, unless dissipated, to eventually engulf the parties with hurricane force. Under its 1961 agreement, the MEBA had chosen the path of a highly improved pension program, into which it placed a major portion of the available cost package. Thus, as of 1962, there was established for MEBA's members a pension benefit of $200 per month for twenty years of service, regardless of age. Pensions covered under the other union collective bargaining agreements ranged from $100 per month for unlicensed seamen to $150 for licensed officers; all were based on twenty years of service with retirement between sixty and sixty-five years of age. The other unions had generally used their respective cost packages for diverse benefits, including general wage increases.

In 1963 the subsidized companies were preparing their designs for the construction of automated or retrofit vessels as part of their ship replacement program. The Maritime Administration, which supervises the construction subsidy for such new vessels, insisted that the companies obtain agreement from the affected unions for a decreased manning scale[13] as a precondition to subsidy approval. The companies accordingly initiated discussions with the MEBA. The union responded with a program which was accepted by all the companies under contract

[12] N.Y. Times, Aug. 18, 1962, p. 42, col. 6.

[13] In the case of the subsidized companies, if there is a decrease in the manning level, the savings in large measure accrue to the federal government rather than to the individual companies. However, the collective bargaining is confined to the companies and the respective unions, with no direct participation by the Government other than its economic power to disallow subsidy for any manning which it believes to be excessive. As frequently stated, the unions find themselves in negotiations over which Hamlet exercises a veto power but Hamlet is ever absent.

on the Atlantic and west coasts. The agreements, which were due to expire June 1964, would be extended to June 1965 in common with the other maritime unions. The pension would be increased to $300 per month, and a tentative and lower manning scale for engineers on the automated vessels was approved subject to certain conditions: First, after the new vessels were in operation, a factfinding survey would be made by an impartial firm to determine whether the new automated machinery increased the normal work load for the lesser number of engineers; second, the prevailing jurisdiction of the engineers would be observed; and third, any disputes between the parties would be subject to the contract's arbitration machinery. A pattern was thereby established which, if followed in the case of the other unions, would have provided a fair method to determine the proper manning for the new style vessels.

Unfortunately, this did not occur. Discussions which followed between the NMU and the companies broadened into negotiations for a new agreement which would expire in 1969. New benefits were granted which were estimated as being equal to fifteen to sixteen per cent of base wages, with periodic wage reviews available, predicated essentially on what other maritime unions might obtain for the period succeeding June 1965. Such a protective clause, initially introduced in this agreement, has come to be known in the industry as the "Me Too" provision. In addition, there was provision for an automation fund into which each company would contribute a fixed sum per day for covered personnel. The companies, however, obtained no specific protection relating to manning on the automated vessels. Instead, it was agreed that the manning scale for any such new vessel, as in the case of standard vessels, must be mutually agreed upon before the ship is commissioned for operation. Separately, and only on a tentative basis, the NMU approved a decreased manning scale for the initial automated and retrofit vessels to operate; but in face of the contract provision, such tentative approval could be withdrawn unilaterally and the companies could invoke no binding arbitration procedure.[14]

Concurrently, the MM&P refused to enter into any agreement covering manning on the automated vessels but, rather, insisted upon the same scale as prevailed on the conventional ships. The differences in treatment which thus emerged forbode severe difficulties for the industry.

The second timebomb which was set to ticking in 1964 involved MM&P's contract on the west coast, which was due to expire on June

[14] In spite of the severe shortcoming of the agreement, it was hailed by the president of the AMMI as marking a milestone for the maritime industry: It ". . . is geared throughout to meet the impact of automation and mechanization on American Flag shipping and on seagoing maritime labor." N.Y. Times, Aug. 17, 1963, p. 46, col. 1.

15. As indicated, this union had utilized its cost package available under its 1961 agreement for diverse benefits, including wage increases. The PMA executed a one-year extension with MM&P to continue until June 15, 1965, pursuant to which the latter union received all of the benefits for which MEBA had used its 1961 cost package, including specifically the service pension. It was apparent to all in the industry that PMA had sparked off a new era of spiralling which would plague the forthcoming 1965 negotiations. By such a single extension and the inequity created against all the other maritime unions, the PMA had undone all that had been accomplished after agonizing negotiations and bitter strikes in 1961.

During 1964 several of the companies activated their first retrofit and automated vessels. Under its agreement with one such company,[15] MEBA invoked the service of the impartial factfinding agency to conduct its survey aboard the new retrofit vessel within the guideposts agreed upon between the union and the company. The report which followed found that the automated engine room machinery did not decrease the work load of the engineers. The MEBA thereupon requested the company to add two more engineers to meet the required standard manning scale. Agreement was reached on a tentative basis for the addition of one more engineer. Forthwith, the NMU refused to man the vessel unless its manning scale was increased but refused to utilize the services of any factfinding agency. Brought before the arbitrator, an award was issued directing the union to discontinue the stoppage, and recommending that two more unlicensed persons be temporarily added to the manning scale pending the completion of a factfinding survey. The union refused to comply, and a court declined to issue an injunction enforcing the award. The sole basis for NMU's demand was that the number of engineers had been increased; it was not predicated on need nor was any other justification urged.

Previously, for the initial voyage of the same vessel, the MM&P insisted on its standard scale before sailing. An arbitrator directed MM&P to terminate its stoppage, which award was confirmed by court order.

At this point, the company, with the knowledge and apparent consent of the Maritime Administration, complied with NMU's insistence that its crew number be increased by three and also, though not required to do so, added to the manning for MM&P. The vessel sailed. Thereupon MEBA requested arbitration to obtain its standard manning as justified under the factfinding survey conducted on the vessel. The arbitrator upheld its claim. Under these conditions, if vessel automation depended on agreement with all the unions for reduced manning scales, the future appeared to be most bleak.

[15] Gulf & So. Am. S.S. Co.

III. The Negotiations Preceding the Strike

The situation confronting the industry was not comforting. On the west coast, because of PMA's 1964 contract with the MM&P, a glaring inequity had been created against the other unions. For the 1965 agreement, it could thus be anticipated that the cost package to be sought by these unions would include an additional amount to eliminate the inequity. But it could equally be expected that the MM&P would not accept any 1965 cost package of lesser amount than that accorded the other maritime unions. This impossible situation, created by PMA, made it difficult to foresee a peaceful settlement on the west coast. The Atlantic and gulf coasts did not appear to present any comparable problem.

A number of meetings were held between representatives of the PMA, the AMMI and the Tanker Service Committee at which the west coast ship operators actively urged a policy of joint and unified collective bargaining. This proposal was firmly rejected by the AMMI, which felt that the west coast companies could not avoid a strike, and they did not wish to be caught in the same web.

Several months prior to the June 15, 1965 termination date, MEBA, aware of the differences among the shipowners and their failure to agree upon any joint action, approached the subsidized companies on the Atlantic and gulf coasts. In an effort to provide a basis for settlement of all the contracts shortly due to expire, a proposal was made which included: (a) A four-year contract to terminate June 1969; (b) a cost package equal in amount to that given to the NMU, effective June 1965; (c) wage reviews during the term of the new agreement based in part on the "Me Too" protection; and (d) a continuation of the previous agreement made with MEBA covering manning on the automated and retrofit vessels.

This concrete proposal was rejected. Negotiations were thereafter conducted on a most desultory basis so that by June 1, the companies may have met with each of the unions two or three times at best with practically no effective or meaningful discussion.

The SIU for the Atlantic and gulf coasts, and its Pacific Coast District for the west coast, offered a sixty-day extension to their contracted companies. This was accepted. The other unions on the west coast, though not extending their respective contracts, had not taken any strike action by June 15.

Thus, the center of attraction moved toward the MEBA, MM&P and the ARA on the Atlantic and gulf coasts. The companies were broken down into essentially three groups: eight subsidized companies which were the core of AMMI, all other dry cargo companies and the tanker operators.

The MEBA had no insoluble problems with either the tankers or the non-subsidized dry cargo companies. Prior to June 15, a new four-year agreement was reached with all of these operators providing a cost package equal to 3.2% of total employment costs for each of the four years, the allocation of which was subject to the discretion of the union. While such settlement was within the guidelines of the national wage-price policy, it did result in a substantial increase since total employment costs include, in addition to base wages, all fringe benefits and overtime which, as one factor in the maritime industry, amounts to fifty per cent of the base pay. The 3.2% of total employment costs equalled six to seven per cent of base wages.[16] An essential ingredient of this settlement was that if any other maritime union received a greater economic cost package, the difference would be extended to MEBA.

These two group of companies, however, faced a more difficult problem with the MM&P and the ARA, with whom new contracts had to be completed to avoid a strike on June 15. Essentially the issue was this: In past years, MEBA had, through negotiation on contract termination, or during the administration of past contracts, obtained benefits not yet enjoyed by these two unions. They declared their determination to eliminate such inequities as well as receive a package comparable to the 3.2% of employment costs granted MEBA. But if the companies were to yield, they would be faced with the subsequent claim of MEBA under the "Me Too" provision.

The non-subsidized dry cargo companies reached agreement with MM&P and the ARA prior to June 15, granting these unions practically all of their demands.[17] The vessels of these companies were not affected by any stoppage, but they are subject to a pending claim by MEBA, not yet submitted, for additional benefits. This is complicated further by the fact that the MM&P and ARA contracts contain a "Me Too" clause which in turn could lead to endless spiralling. Another factor is that these companies obtained a "Me Too" clause of their own, so that if the two unions failed to obtain all the benefits granted from the eight subsidized companies, each of the companies would be accorded similar treatment.

The tanker companies reached an agreement with the ARA, but were struck by the MM&P. After a brief stoppage, settlement was reached. Essentially, these companies contend that they did not breach

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[16] Thus, over the 4-year period of the contract, the total increase would be 24% to 28% of base wages while the proposal submitted by MEBA in the spring of the year and rejected by the companies only amounted to 15% to 16% of base wages.

[17] Several companies, both subsidized and unsubsidized, which were members of the AMMI, left its fold and signed these contracts with the MM&P and ARA.

the 3.2% cost package, but instead granted increased manning to the MM&P.

The strike, which started on June 16 and lasted over two months, involved the MEBA, MM&P and the ARA. It was directed essentially at the eight subsidized companies operating on the Atlantic and gulf coasts. Contrary to all previous expectations, the west coast operators were not confronted with any stoppage, but continued their collective bargaining.

As compared with approximately 720 vessels operating under renewed or extended contracts,[18] the eight companies controlled about 180 vessels. Of this number, over half were unaffected by the extended strike, since they were either on extended voyages or engaged in transporting military cargo and, by agreement with the unions, were continued in uninterrupted service. The significant question is how these eight subsidized companies, as distinguished from all the other segments of the maritime industry, had become entrapped in a strike.

IV. The Strike, The Issues and The Settlement

The basic money package was not in issue immediately preceding nor during the strike. There was agreement on the 3.2% of employment costs for each year during the term of any new agreement. However, in the MEBA negotiations, which occupied the concentrated attention of the Federal Mediation and Conciliation Service, an unexpected stumbling block emerged because of conflicting views of different government agencies.

As previously indicated, MEBA had concentrated upon a pension program in its 1961 agreement. One of its 1965 demands was further improvement of the pension benefits with the accompanying understanding that whatever cost was involved would come out of any cost package agreed upon. Further, MEBA demanded that the union have the right to determine the specific benefits to which the remaining available cost package would be applied. This program presented no problem to the companies and it met with the approval of the federal mediation panel. At a crucial stage in the negotiations, Secretary of Commerce John T. Connor, as a guest speaker on a national television program,[19] remarked that the pension program requested by MEBA, though to be financed within the national wage-price policy, would nevertheless have an inflationary impact. It is, of course, a rather novel concept that a money package agreed upon in collective bargaining would have inflationary aspects if applied to pensions but not if put

[18] This would include all vessels, dry cargo and tankers, operating on all coasts under contracts with the AFL-CIO unions or the few independent unions.

[19] "Meet the Press," July 18, 1965.

into immediate wage increases.[20] This position buttressed a decision of the Maritime Subsidy Board, issued during the 1965 negotiations although pertaining to a 1963 agreement between certain subsidized companies and MEBA, which cast doubt on the approval of future subsidies for additional contributions to the MEBA pension plan.[21]

Negotiations between the parties came to a grinding halt. The eight subsidized companies took the position that any increase in their labor costs coming as a result of negotiations with the union must be reimbursed by subsidy; and, if this be in question, there could be no fruitful negotiations or agreement. The Maritime Administration contended that the companies as private entrepreneurs were free to negotiate and bargain; the Government merely exercised the subsequent right to approve or disapprove for subsidy certain items of wage cost. But this Alice in Wonderland did not enhance the posture of the negotiations. It was only after the intervention of another cabinet officer[22] that agreement was reached on the issue. The union, by contract, was empowered to allocate the available money package, including improvement in the pension plan, and the companies received assurance that their subsidy would not be challenged.[23]

The second knotty problem involved manning on the automated vessels. On the eve of the strike, the companies indicated their dissatisfaction with and their desire to terminate their 1963 agreement with MEBA on this subject. That agreement had provided for a tentative manning scale with appropriate safeguards to protect jurisdiction, preclude increase in work loads and to provide for fact-finding and binding arbitration in the event of a dispute. The objection was that, although this approach was rational and fair, the employers' experience with the NMU and the MM&P, as previously described, made it impossible to accept arbitration with MEBA since this could result in upward revisions in manning for the engineers. Thus, the companies insisted that what had been agreed to as tentative manning on the automated vessels must be frozen for the duration of any new agreement.

MEBA offered alternative proposals: first, to negotiate a final and binding manning scale for automated vessels—it maintained that a method agreed to on a tentative basis, which had been shown through the factfinding surveys to be inadequate, should not be fixed as

20 The National War Labor Board and the Wage Stabilization Board, during World War II and the early post-war years, emphasized the need of casting all new benefits into pensions and fringe issues rather than wages to avoid inflation.

21 Collective Bargaining Agreement—MEBA, No. A-14, Maritime Subsidy Bd., July 13, 1965.

22 Secretary of Labor W. Willard Wirtz.

23 Statement by Secretary of Commerce John Connor, N.Y. Times, Aug. 6, 1965, p. 54, col. 1.

permanent simply because other unions so insisted; or, second, to continue the tentative manning with a clear provision that all manning on the automated vessels was subject to future mutual consent. Failing agreement, there could be no arbitration. The companies conceded that such a provision was in the NMU contract but they refused to accord equal protection to MEBA.

The Secretary of Labor, after a series of discussions with the parties, held jointly and separately, submitted a proposal on this thorny issue in an effort to settle the strike:[24] MEBA accepted; the companies rejected. The solution offered was that the manning tentatively agreed upon on the automated vessels which were in operation at the initiation of the strike be continued for a period of six months. During that period, the Secretary of Labor and the president of the AFL-CIO would endeavor to obtain agreement among all the affected maritime unions on procedures to determine disputes relating to manning.

The impasse was broken through the intervention of the President of the United States, who requested the parties to accept the program advanced by the Secretary of Labor. He also offered to assist the joint efforts of the Secretary of Labor and President Meany of the AFL-CIO.[25] The eight subsidized companies accepted the program. Agreement quickly followed, and the contract with MEBA was executed.

The Department of Labor's attention then turned to the disputes between the same eight subsidized companies and the MM&P and ARA. It had been anticipated that the pattern evolved with MEBA would swiftly dispose of these two remaining contracts, but the strike continued for several more weeks before settlement was reached. The core of the problem confronting the parties was this: In their contracts with the other dry cargo companies, MM&P and ARA had obtained economic concessions beyond the cost package fixed by the 3.2% guideline to meet the so-called inequities vis-à-vis the MEBA.

The eight subsidized companies refused to follow suit for two reasons: First, under the "Me Too" clause contained in their contract with MEBA, any such concession to MM&P and ARA combined with a "Me Too" clause to the two latter unions would result in a deadly endless escalation; second, any economic package in excess of the 3.2% limit would probably be disapproved by the Maritime Subsidy Board.

The settlement which emerged was the product of long, exhausting hours of negotiations and the driving insistence of representatives of the Labor Department that a conclusion must be reached in the face of the President's mounting displeasure with the continuing strike.

[24] Statement by Secretary of Labor W. Willard Wirtz, N.Y. Times, Aug. 1, 1965, p. 78, col. 5.

[25] Statement by President Johnson, N.Y. Times, Aug. 18, 1965, p. 1, col. 3.

Under such circumstances, it is not difficult to understand why the completed contracts with the MM&P and ARA, though terminating the strike, have only created more tormenting problems for the industry.

First, while the 3.2% guideline is set forth as the limitation, the agreement incorporates certain additional benefits which obviously will increase the total cost package. This result would automatically invoke the "Me Too" clause under the MEBA contract. In an effort to avoid this, the Secretary of Labor gave the parties a written interpretation advising them that MEBA, under its agreement, could not so utilize the "Me Too" protective provision to obtain equal additional benefits. Such intervention by the Secretary of Labor into a contract under which he is not the arbitrator, and especially in the absence of any participation by MEBA, raises a serious question as to the continuing validity of its agreement with the eight companies.

Second, the essence of the agreement reached between MEBA and the eight companies on manning for automated vessels was the anticipated consent of all maritime unions to procedures for determining manning disputes. As indicated,[26] the NMU for the unlicensed and MEBA for the licensed officers had tentatively accepted a reduced manning. But in the final agreement with MM&P, which was completed under the direct auspices of the Secretary of Labor, all manning was frozen so that automated ships would have the standard manning applicable to conventional vessels for the full term of the agreement. This bodes ill for any attempt to procure the consent of other unions for any program which could affect them only adversely with no corresponding participation by the MM&P for the deck officers.

Third, a provision was incorporated in the MEBA contract which admittedly merely confirmed a pre-existing practice permitting each engineer, upon the completion of a voyage and while the vessel was in port, to obtain one day off without loss of pay. Such a provision, not being a new benefit, its cost, if any, was not allocated against the new 3.2% package. In the course of the ARA negotiations, however, one of the Labor Department mediators supervising the sessions held that such provision in the MEBA contract did establish an increased cost and thereby the ARA was entitled to some comparable benefit. Following this ruling, a subsequent arbitration award granted ARA an improvement in its vacation program. This immediately permits both MEBA and the MM&P to require comparable increases in their respective vacation benefits, a most costly item, and, in the industry's mournful expectation, would not be approved for subsidy purposes since it is beyond the 3.2% guidepost.

[26] See p. 809 supra.

In comparison with the harrowing experience of the eight subsidized companies on the Atlantic and gulf coasts, the subsidized industry on the west coast encountered no stoppage of work. The MM&P executed a contract for four years, which fell within the 3.2% guidepost, but provided benefits below what its counterpart obtained on the Atlantic and gulf coasts. MEBA's contract assures precisely the same benefits as were secured from all the companies on the Atlantic and gulf coasts, thereby completing a national contract for at least one of the affected maritime unions. In addition, the PMA agreed that on any automated vessel to be commissioned, there can be no reduction in manning unless the union agrees, and no dispute on this issue may be submitted to arbitration.

The three unions on the west coast embracing the unlicensed personnel, *i.e.*, SUP, MFO&W and M.C.&S., affiliated with the SIU, have not, as of this writing, completed their new agreement. It is known that tentative agreement has been reached on substantial improvement in the pension program. For manning on automated vessels, these unions have apparently reached agreement with the PMA that no changes can be effected in the absence of mutual consent, and arbitration on any disputed issue is expressly precluded; in addition, where reductions are agreed upon, the company will contribute at least half of the wages of the personnel so decreased into a fund. To complete the picture, the SIU for the Atlantic and gulf coasts quietly negotiated to a conclusion its renewed contracts with the companies involved for a three-year term to expire in 1968.

An additional discouraging donnybrook apparently awaits AMMI's eight subsidized companies in 1966. The agreement which they executed with NMU in 1963 provided for new benefits effective as of June 1965, amounting to approximately fifteen to sixteen per cent of base wages. The Maritime Subsidy Board has already issued an opinion[27] relative to this agreement, that such an increase in wage costs would be approved for subsidy since, when averaged over the four-year term of the contract, it does not exceed 3.2% of total employment costs for each year; but any additional benefits granted during the period would pierce the ceiling and probably be disapproved. However, the eight companies are aware that, in the face of the new contracts completed with the other unions, particularly those on the west coast, the NMU must and will exercise its available wage review in 1966. If any relief is granted, the "Me Too" clauses in the other union agreements would be automatically activated.

It is difficult to see how any new legislation could possibly have

[27] Collective Bargaining Agreement—NMU, No. A-15, Maritime Subsidy Bd., July 13, 1965.

coped with or eased the manifold problems which emerged during the course of these negotiations. All parties involved were in agreement that a Taft-Hartley injunction would not have served any useful purpose, and the federal government refrained from seeking any. The basic question is whether, in the face of the chaotic situation which clearly exists, do not labor and management have a compelling duty to address themselves to the elementary issue at stake, namely the preservation of the industry, in order to devise the necessary voluntary measures to meet their needs?

V. Concrete Proposals for the Industry

In the field of private enterprise, no better substitute has yet been devised for the development of sound labor relations than collective bargaining. This, of course, is the foundation of our national labor policy[28] and has been fully supported by judicial decisions.[29] Most expert opinion frowns upon compulsory arbitration as a solution for industrial disputes since it would tend to weaken, if not fully negate, the process of direct collective bargaining.[30]

Clearly, none of the traditional legislation usually urged for the elimination of strikes would have served any useful purpose in the recent maritime dispute. Federal mediation was fully utilized. If compulsory arbitration had been the known end result, there would have been no collective bargaining or any durable resolution of the basic problems besetting the industry.[31]

It is significant that all the unsubsidized dry cargo operators and the tankers did complete their agreements with at most a brief stoppage. This group even included several companies which, although originally identified with the AMMI, quickly determined not to become embroiled.[32] Equally important is the fact that one large subsidized operator on the gulf coast perfected an agreement, and the west coast shipowners, while mostly subsidized, continued to engage in fruitful negotiations and are near agreement without any interruption of operations. Thus, while one or more of the participating unions may have contributed to an unnecessary strike with the eight

28 National Labor Relations Act, 49 Stat. 449 (1935), as amended, 29 U.S.C. § 151 (1964).

29 Fiberboard Paper Prods. Corp. v. NLRB, 379 U.S. 203 (1964); United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960).

30 See Brotherhood of R.R. Trainmen, The Pros and Cons of Compulsory Arbitration (1965).

31 On August 28, 1963, the President of the United States signed the first national act imposing compulsory arbitration upon the railroad industry. 77 Stat. 132 (1963), 45 U.S.C. 157 (1964). But in 1966 the railroad unions are threatening a national tie-up upon the termination date of said law since the arbitration process completely failed to meet the problem involved.

32 Bethlehem Steel, Marine Transp. and Alcoa S.S.

subsidized companies, the latter group through their ineptness and the conflicting policies of the intervening federal agencies must share the responsibility.

One vital problem which demands solution relates to the federal subsidy and its impact in the arena of labor relations. Under such subsidy program, all increases in wage costs embodied in new labor agreements, if approved for subsidy by the Maritime Administration, will be paid by the United States Government. The eight subsidized companies caught in the strike have become imbued with the concept that all increases in wage costs negotiated with the unions must be so subsidized, and no part of such costs should be borne as operating expenses and charged against operating profits.[33] In fact this has been the practice for many years. Of recent date, however, the Maritime Administration repeatedly asserted that it will not give a prior blank check and will insist upon the right to review any collective bargaining agreement to determine whether, at a subsequent date, the agreed upon increased wage costs are fair and reasonable and thus reimbursable through the subsidy. But at the same time, the Maritime Administration declined to participate in the labor negotiations assuming instead that the parties would agree. As an alternative, it issued directives, in the case of manning and pension plans, as to what the proper standards should be, thereby binding the hands of the operators who felt they were left with no discretion in the bargaining arena. Accordingly, these subsidized companies seized the earliest opportunity to demand government intervention to arbitrate the dispute on the assumption that the subsidy for increased costs so determined could not be withheld in the face of the arbitration award.

Obviously, in such a state of affairs the companies and the unions could not engage in any rational collective bargaining; their failure to come to agreement is no reflection on the process itself. But equally so, the injection of compulsory arbitration would be merely a coverup for a clear abdication of managerial responsibility. A solution has been offered. The basis of the subsidy program must be revised, leaving the operators free to conduct their business as any other private enterprise and subject to the same free play of economic forces.[34] Only in this

33 One subsidized company on the gulf coast, the Delta S.S. Co., harbored no such frozen concept and completed the standard contracts without any strike. Similarly, on the west coast, the subsidized companies have negotiated with complete freedom of action and have apparently avoided any needless stoppage.

34 Task Force report prepared by representatives of several federal departments for submission to the President's Advisory Committee on Maritime which, in part, proposes to revise the basis on which operating subsidies would be computed so as to enhance company incentive and ingenuity and to eliminate any automatic payment by the Government of increases in wage costs negotiated in collective bargaining. See U.S. Dept. of Commerce, The Merchant Marine in National Defense and Trade, A Policy and a Program, The Inter Agency Maritime Task Force (1965).

manner would collective bargaining as a process receive a fair test and the anachronistic intervention by the Government, as displayed in the recent negotiations, be eliminated.

Further, experience has shown the imperative need for joint and cooperative action within the respective ranks of management and labor. Management in the maritime industry can ill afford to point to the many unions with which they must negotiate while their own house remains as disunited as it is. Comparable responsibility must be exercised by the labor unions. While the disparate economic needs of diverse types of operations among the companies may justify separate trade associations, such need is certainly not present within the area of labor relations. On the labor side, however, there are historical reasons unique to maritime operations explaining why craft unions have developed in this industry; these cannot be airily waved aside. But cooperative action does not necessarily require mergers or consolidation. In the closely-knit maritime industry, where the same economic pattern for all unions would not create hardship or injustice as long as each union could determine for itself the specific benefits desired by its membership, joint action among the unions should be the objective. Such pattern would inevitably encourage long-term agreements with common expiration dates and identity of treatment for the same problem thereby discouraging any management effort to play favorites. Further, it would tend to eliminate any "whipsawing" or "rolling" with its accompanying endless escalation.

If this be accomplished, a basis will have been laid for greater mutual understanding. Only within such a framework could there be fruitful effort to obtain voluntary agreement upon procedures for final and peaceful determination of inter-union and labor-management disputes concerning disturbing problems such as manning on automated vessels and related issues. A dual recognition by management and labor of their respective obligations, and concrete action taken in fulfillment, should result in giant steps toward a more stable and matured relationship among the parties. Such an approach would be more meaningful for the avoidance of needless and repetitive strikes than legislation engendered in anger to be wielded as a blunderbuss.