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Article abstract

LE RAPPORT FREEDMAN

Le texte ici présenté reproduit de larges extraits du Rapport de ia Commission d'enquête constituée de l'Honorable Juge Samuel Freedman, de la Cour d'Appel du Manitoba, en marge d'événements récents survenus en rapport avec la politique des Chemins de fer nationaux (C.N.R.) relativement aux parcours prolongés.

Ce rapport revêt une importance considérable pour l'avenir des relations du travail au Canada en ce qu'il interprète, à l'occasion du cas précis qu'il étudie, les droits de la direction des entreprises en matière de changements technologiques, et qu'il dégage le principe général à l'effet que, nonobstant l'état actuel du droit et de la pratique en relations industrielles chez-nous, l'employeur ne peut décider seul en une telle matière, laquelle devrait être l'objet de négociation entre les parties intéressées, et donner ouverture aux mécanismes et aux recours prévus par les lois du travail pour la solution des conflits d'intérêts, en cas de mésentente.

Si la mésentente survient pendant la durée d'une convention collective, le Rapport Freedman suggère qu'une distinction soit faite entre les changements technologiques mineurs, ne touchant pas de façon substantielle le régime du travail, et les changements majeurs de nature à altérer considérablement ce régime.

Afin d'établir cette distinction, il suggère la procédure de l'arbitrage obligatoire. Si la décision est à l'effet qu'il s'agit d'un changement mineur, l'employeur pourrait y procéder immédiatement ; si au contraire, il est décidé que le changement en est un majeur, l'employeur ne pourrait le mettre à exécution durant le cours de la convention collective existante et le problème deviendrait matière à négociation lors des pourparlers en vue du renouvellement de cette dernière, comme toute autre matière faisant l'objet de ces pourparlers.

INFORMATIONS

CHANGEMENTS TECHNOLOGIQUES ET CONVENTION COLLECTIVE

LE RAPPORT FREEDMAN

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Nature et historique du problème

1. Le problème que constituent les parcours prolongés sous leur aspect présent et dans leurs dimensions actuelles est avant tout une conséquence technologique. L'avènement du moteur diesel et les autres progrès technologiques ont permis aux chemins de fer de fonctionner sans avoir à changer d'équipe pour une distance plus grande que ce n'était possible à l'époque des locomotives à vapeur. (Chapitre 2)

2. Une étude de la situation au cours d'une période d'au moins six ans montre que les parcours prolongés ont été une source de tension entre la main-d'oeuvre et la direction. Tous les signes indiquaient qu'il fallait prévoir des difficultés. (Chapitre 3)

Comment il faudrait procéder pour instituer les parcours prolongés

3. La Compagnie a le droit, compte tenu des lois actuelles et de l'usage, d'instituer des parcours prolongés ; la Commission est d'avis, cependant, que la Compagnie ne devrait pas continuer à jouir de ce droit. L'institution des parcours prolongés devrait faire l'objet de négociations. La situation actuelle, qui permet à la direction d'apporter unilatéralement des changements dans les conditions de travail pendant la durée du contrat, constitue une injustice manifeste qui appelle l'attention et la rectification.

De l'avis de la Commission, la Compagnie devrait donner aux Fraternités un avis préalable de 30 jours de son intention d'instituer un parcours prolongé comme prélude à la négociation à ce sujet. (Chapitre 9)

4. Les effets des parcours prolongés ne sont pas toujours les mêmes et, pour cette raison, la Commission recommande que l'une et l'autre partie aient le droit de demander à un arbitre de trancher la question de savoir si un parcours prolongé aura ou non pour effet de modifier sensiblement les conditions de travail. Advenant que la conclusion de l'arbitre soit négative, la ompagnie serait immédiatement autorisée à mettre à exécution son projet de parcours prolongé. Si, d'autre part, le parcours prolongé devait modifier sensiblement les conditions de travail, la Compagnie serait tenue (à moins que la Fraternité ne consente au parcours prolongé) de retirer son projet jusqu'à l'arrivée de la prochaine période régulière de négociation de la convention. L'arbitrage proposé ici serait confié à un seul arbitre choisi par les parties, ou, à défaut d'entente entre elles, désigné par le ministre du Travail. (Chapitre 9)

5. A supposer que les parties ne parviennent pas à s'entendre pour donner suite à la recommandation de la Commission, des mesures législatives s'imposeraient. On pourrait invoquer ou la loi sur les chemins de fer ou la loi sur les relations industrielles et sur les enquêtes visant les différends du travail. Dans le dernier cas, il serait possible de prévoir, au moyen d'une modification appropriée, que toute innovation, invention ou modification d'ordre technologique, proposée par l'employeur, qui porterait sensiblement atteinte aux conditions de travail des employés, devrait être remise à plus tard ou faire l'objet de négociations au moment de la prochaine période de négociations ou être traitée de la même façon que s'il s'agissait d'une mesure tombant sous le coup des dispositions du paragrapre (2) de l'article 22 de la loi. Cette disposition porte que les parties peuvent, par leur convention collective, renvoyer l'étude d'une question à plus tard, et elles ont encore le droit de faire la grève ou de déclarer le lock-out relativement au règlement de ce problème, après qu'elles se sont conformées aux dispositions de la loi relatives à la conciliation obligatoire. Une modification de la loi sur les relations industrielles et sur les enquêtes visant les différends du travail aurait l'avantage de combler une lacune que les progrès technologiques ont fait voir dans la loi. (Chapitre 9)

Obligations de la Compagnie envers les employés

6. La Commission est d'avis qu'il incombe à la Compagnie de prendre des mesures raisonnables pour réduire au minimum les effets défavorables qu'un tel parcours prolongé pourrait avoir sur les employés. Cette obligation tire sa source du principe selon lequel, lorsqu'on procède à un changement technologique, le fardeau des mesures raisonnables destinées à protéger les employés contre les conséquences défavorables que comporte ce changement doit naturellement être imputé sur le compte des avantages et des épargnes qui en découleront. (Chapitre 10)

7. La Commission recommande que tout employé obligé de déménager parce qu'un parcours est prolongé doit recevoir de la Compagnie une indemnité pour la perte d'argent subie dans la vente de sa maison à un prix inférieur à sa juste valeur.

Si l'employé forcé de déménager n'est pas propriétaire de la maison qu'il habite, mais qu'il l'occupe en vertu d'un bail non expiré, la Compagnie devrait le protéger contre les pertes financières qu'il subit parce qu'il doit mettre fin à ce bail. (Chapitre 10)

8. Au sujet des frais de déplacement découlant de l'institution des parcours prolongés, la Compagnie recommande que les privilèges relatifs au déménagement des effets mobiliers vaillent pour le déménagement d'une maison à l'autre, non pas seulement d'une gare à l'autre. (Chapitre 10)

9. Un employé qui a été au service de la Compagnie pendant au moins un an et qui perd son emploi en raison de l'établissement d'un parcours prolongé devrait avoir droit de recevoir une indemnité de licenciement ou une somme globale comme allocation de départ, selon les dispositions de la loi sur le National-Canadien et le Pacifique-Canadien, dont il est fait mention d'une façon plus précise dans le chapitre 6 du rapport. (Chapitre 10)

Obligations de la Compagnie envers les collectivités

10. De l'avis de la Commission, les obligations de la Compagnie envers les collectivités découlent d'un civisme bien compris, ce que le National-Canadien reconnaît lui-même. L'application pratique de ce principe exige que la Compagnie accorde une attention particulière aux questions suivantes: moment et échelonnement du changement, préavis suffisant, et assistance technique pour aider la collectivité à s'adapter aux effets du changement. (Chapitre 10)

11. Au sujet des parcours prolongés, deux principes contradictoires de la Compagnie semblaient en conflit. D'une part, il s'agissait du principe des préavis aux localités et, d'autre part, du principe du silence, de peur qu'une information hâtive suscitât du malaise et de l'agitation. La Commission exprime son approbation du premier et sa désapprobation du second. (Chapitre 10)

Obligations des syndicats envers les collectivités

12. Un civisme bien compris de la part des syndicats est tout aussi nécessaire que le devoir correspondant imposé aux compagnies. Ces obligations exigent qu'on reconnaisse ceci: le changement est une loi de la vie et une résistance acharnée au progrès technologique nuit à tout le monde, y compris les travailleurs. (Chapitre 10)

13. Par suite de plaintes selon lesquelles le régime d'ancienneté pêche par un certain manque de souplesse, la Commission recommande que les Fraternités étudient le régime applicable à leurs membres en vue d'y introduire une mesure plus grande de souplesse n'entrant pas en conflit avec l'objectif général de ce régime. (Chapitre 10)

Obligations de l'Etat envers les collectivités

14. La Commission est d'avis qu'un gouvernement a des obligations envers les collectivités dont l'existance ou la stabilité sont menacées par un parcours prolongé ou ses conséquences. (Chapitre 10)

15. La Compagnie devrait donner un avis de 30 jours de son intention d'instituer un parcours prolongé à l'autorité compétente de la collectivité ou des collectivités intéressées La collectivité devrait, pendant cette période de 30 jours, jouir du droit de demander à la Commission des transports du Canada (ou, au choix, à l'Administration de l'organisation rationnelle des embranchements dont on recommande la formation dans le rapport de la Commission royale d'enquête sur les transports, advenant que celle-ci soit créée) de l'entendre au sujet du projet du parcours prolongé de la Compagnie. L'objet essentiel d'une telle étude serait de décider si le moment choisi par la Compagnie pour exécuter son projet et les étapes de cette exécution sont raisonnables ou non. La Commission des transports (ou l'Administration) étudierait le contrecoup probable sur la localité du parcours prolongé envisagé en vue de déterminer non pas **s'il** y a lieu ou non d'instituer le parcours prolongé, mais plutôt la **façon** et le **moment** de l'instituer. (Chapitre 10)

16. Quand l'intérêt public exige un délai, l'Etat, au nom de l'intérêt public, doit en faire les frais. Dans la pratique, cela veut dire qu'il faudrait, au moyen des deniers publics, rembourser la Compagnie de toute perte qu'elle subit en obéissant à l'ordre de la Commission des transports (ou de l'Administration) de retarder son projet. (Chapitre 10)

17. Après l'institution d'un parcours prolongé, le pays conserverait des obligations envers la localité qui en subit le contrecoup. Cette responsabilité existerait à la fois à l'échelon provincial et à l'échelon fédéral et devrait être partagée en conséquence. (Chapitre 10)

18. Malheureusement, il est impossible de garantir le maintien d'une collectivité dans son état actuel. En conséquence, en proposant des sauvegardes à l'intention des collectivités, la Commission n'a pas pour objet d'empêcher les parcours prolongés, mais seulement de les retarder pendant une période raisonnable pour permettre l'adaptation aux effets de celui-ci. (Chapitre 10)

Répercussions du progrès technologique sur l'économie et sur les hommes

36. La dieselisation et d'autre changements d'ordre technologique ont contribué à la réduction de l'emploi aux chemins de fer. (Chapitre 8)

37. Les parcours prolongés sur le National-Canadien s'accompagneraient de réductions et de bouleversements de l'emploi. Ce sont là les conséquences, du point de vue des hommes ; et la suppression ou la réduction de leurs effets est la tâche à laquelle doivent s'employer en collaboration la direction, le travail et le gouvernement. (Chapitre 8)

Généralités

38. Le rapport de la Commission est conçu en fonction des parcours prolongés et, chaque fois que cela se peut, en fonction de situations semblables. Cependant, prédire la nature des situations et dire de quelle façon elles pourraient se présenter à l'avenir serait hasardeux et la Commission ne se croit pas tenue de le faire. (Chapitre 11)

39. La Compagnie et les Fraternités doivent être prêtes à faire des concessions dans l'intérêt de la paix industrielle à l'avenir. La Compagnie doit se faire à l'idée, désagréable peut-être mais nécessaire, qu'il faut négocier les parcours prolongés. Les Fraternités doivent cesser de penser que les parcours prolongés n'ont pas leur raison d'être et envisager les négociations d'une façon raisonnable et réfléchie. Dans cet esprit de coopération et de confiance mutuelle, la cause de la Compagnie, des employés et du pays sera bien servie et progressera. (Chapitre 11)

TECHNOLOGICAL CHANGES AND COLLECTIVE BARGAINING

THE FREEDMAN REPORT

Introduction

1. On Sunday, October 25th, 1964, the Canadian National Railways attempted to put into effect a plan for extended crew runs through the terminals of Nakina, Ontario and Wainwright, Alberta. The plan encountered large-scale resistance from its running trade employees. This resistance took the form of booking off sick, a device in which over 2800 employees of the company participated. The men returned to work after the Prime Minister of Canada announced on October 26th that a Commission would be appointed to examine the C.N.R.'s run-through proposals. That was the genesis of the present Commission.

2. Although the Inquiry evoked widespread interest and produced an abundance of witnesses, it began and it ended largely as a dispute between two parties — the C.N.R., on the one hand, the running trade Brotherhoods, on the other. These are the Brotherhood of Locomotive Engineers (B.L.E.), the Brotherhood of Locomotive Firemen and Enginemen (B.L.F. & E.), and the Brotherhood of Railroad Trainmen (B.R.T.).

3. Following a preliminary meeting dealing with procedure the Commission extended an invitation to the Canadian Pacific Railway to participate in the proceedings. That company, after consideration, reached the conclusion that the terms of reference of the Commission, as set out in the apointment, did not exend to or include the Canadian Pacific Railway. It accordingly did not accept the invitation to participate.

The Nature of the Problem

4. Essentially the run-through is a product of technological advance. That there were some run-throughs in the steam engine days is indeed the case. But the run-through problem in its contemporary aspect and in its present dimension is primarily an outgrowth of technology.

5. The steam engine needed servicing every 125 miles or so. In response to that need railway terminals were established or developd at distances of approximately 125 miles. Crews would run, especially in freight service, from one terminal to another over that distance. The coming of the diesel, along with other technological advances, has made it possible for the railway to run well beyond the former distance without a change of crew. To expedite its service and to reduce its operating costs the company wishes to run through the intermediate terminals by extending the length of its crew runs.

But a run-through brings consequences to the employees of the company. It also has an impact upon a community. The problem is one of satisfying the company's very legitimate objective of progressing with the times and being fully efficient, without unnecessarily impairing the rights of men and communities who might be adversely affected in the process. The problem in short is one of making a reconciliation between economic progress and human security.

The Background of the Problem

6. The crisis of October 25th, 1964, cannot be understood in isolation. It must be viewed against a background of events extending over a period of at least six years. These

events reveal the fissure which was gradually developing between the company of the Brotherhoods on the issue of run-throughs. Its source was the profound concern of the men in the Brotherhoods that run-throughs, and other railway plans flowing from the new technology, would bring about changes in their working conditions, sometimes very great changes, and probably also a reduction in jobs. They accordingly felt that such plans should not be instituted without prior negotiation between the company and the designated representatives of the Brotherhoods.

7. In the years between 1958 and 1964 the run-through issue grew in intensity as a factor dividing the parties. The institution of some run-throughs and the proposed institution of others found management and the Brotherhoods assuming the posture of antagonists. An examination of the record reveals certain issues as coming to the fore — the propriety or otherwise of management unilaterally bringing about changes in working conditions; the claim that this involved a departure from principles of collective bargaining, the assertion that the Industrial Relations and Disputes Investigation Act contained a gap in that it permitted management to change conditions of employment during the contract period; and the refusal of the company to provide compensation for losses on real estate suffered by men dislocated by a run-through.

8. More than once the matter found its way to Ottawa. In May, 1963, a delegation of the unofficial Joint Running Trades Association presented to a group of Members of Parliament, including three Cabinet Ministers, a brief in opposition to the C.N.R.'s run-through plans. Two months later a similar brief was submitted on behalf of the official running trades Brotherhoods.

On December 20th, 1963, the Standing Committee on Railways, Canals and Telegraph Lines, after many hearings extending over several months, reported favourably on Bill C-15, An Act to amend the Railway Act (Responsibility for Dislocation Costs). It recommended that the government give consideration to amending Section 182 of the Railway Act (dealing with compensation to employees for financial loss caused by change of residence necessitated by the company's closing of a station or divisional point) to make it applicable, among other things, to run-throughs.

9. A study of the background shows that run-throughs were a source of tension between labour and management. All signs pointed to potential trouble ahead. They were a warning, or should have been a warning, to the company to handle the run-through issue with special care and circumspection. It would appear, however, that the company was less conscious than it ought to have been of the depth of resentment which run-throughs produced and of the threat to good labour-management relations which they presented. The company looked mainly to the fact that some run-throughs had been introduced and, despite initial opposition from the men, appeared now to be operating satisfactorily. Thus the stage was set for Nakina and Wainwright.

The Operational Aspects of Run-throughs

10. The Brotherhoods challenged the view that run-throughs were justified as a railway operation. They urged that the savings they would effect, in time or money, would be miniscule. Against such minor benefits would have to be weighed the increased hazards which such operations would entail, hazards resulting from long runs, greater fatigue, and the like. The Commission was accordingly invited to condemn the run-through as an undesirable railway operation.

11. Are run-throughs warranted on operational grounds? In support of its case that they are, Canadian National took as its starting point the highly competitive environment which has characterized the transportation industry since the end of the Second World War. The intensity of competition has compelled the company to look for every possible means of achieving greater efficiency in its operations and of reducing costs.

12. A run-through expedites service by eliminating needless delays. The Commission was exposed to a variety of estimates as to the length of time involved in a crew change. Assessing as fairly as it can the mass of controversial evidence that has been offered on this subject, the Commission finds that a saving of 10 minutes as a result of a run-through is realistic and credible.

It is clear from a statement filed by the company pursuant to the direction of the Commission that for the immediately foreseeable future what is involved in the company's plan is not two run-throughs but rather fifteen. The 10-minute saving at a terminal accordingly takes an added significance when the full run-through program is envisaged Moreover, the saving of time at the terminal, although itself important, is not the only benefit. A greater fluidity is given to the service in general, for example, in arranging for a « meet » of trains.

13. A run-through will result in the saving of money by the company. In the case of Nakina the annual saving was shown to be $102,772.00; for Wainwright it was $145,254.00. For the company's full run-through program over the next three to five years a total annual saving of between $850,000.00 and $875,000.00 was suggested as likely. Indeed one witness thought that a figure of one million dollars annually would be nearer to the mark, and the Commission believes that this is not an exaggerated estimate.

14. Stressing the factor of safety the Brotherhoods complained that the company's proposed operation would necessarily entail longer hours on duty, with resultant fatigue, and with consequent danger of accident. The Commission shares the anxiety of the company and the Brotherhoods that runs should be safe. But it notes that the law already has made provision for protection of the public and the men in this very area. Section 290(1) (j) of the Railway Act empowers the Board of Transport Commissioners for Canada to make orders and regulations "limiting or regulating the hours of duty of any employees or class or classes of employees, with a view to the safety of the public and of employees ». From the evidence the Commission discovered that the Brotherhoods had deliberately elected not to ask the Board for such an order but to leave the matter as it stood under existing rules, which provided that « the men are to be the judges of their own condition ».

In this situation the Commission would be justified in saying that the vigorous attack on run-throughs, based on long hours on duty, was misdirected. It should have been addressed to the Board rather than to the Commission. A policy of deliberate refusal to invite the Board of Transport Commissioners to act under its statutory authority and of reliance instead on the provisions worked out in the collective agreement affords poor support for the position now taken by the Brotherhoods.

But the Cmmission does not wish to leave the matter in that way. Dealing with the merits of the attack which the Brotherhoods mounted against run-throughs on grounds of safety, and viewing the evidence on this issue in its entirety, the Commission is not prepared to condemn the run-through as a dangerous operation or to say that it violates canons of safety. Some run-throughs are already in operation in Canada and many more in the United States. If a relationship between run-throughs and accidents existed, some evidence of it would have found its way to the record. But it did not do so.

It may now be appropriate for the Board of Transport Commissioners to take action in this area on its own. The Commission therefore recommends that the Board, in the vigilant exercise of its statutory powers, survey the entire matter of hours on duty, whether related to run-throughs or not, with a view to determining any regulatory action is required, and if so, to take such action accordingly.

15. The Brotherhoods also argued that extended crew runs would bring added discomforts to the men. Longer runs would make the work load unbearable, they said. But considering all factors, including time off duty between trips, the Commission finds that this contention has not been established.

A second point concerned the amenities, or lack of them, in cabooses and in diesel locomotives. The Commission not only heard much avidence on these subjects, but also personally inspected several cabooses and rode for some distance in a diesel locomotive.

The indictment against train facilities and conditions was considerably exaggerated. Not that they should not be improved. Indeed they should. But is an inadequately equipped caboose an answer to a run-through or is it simply an argument for a better caboose? If the facilities of cabooses and cabs are in need of improvement they should be improved, whether trains run over one division or more than one. To say, however, that these facilities would be tolerable over one division but intolerable over two — and for that reason there should be no run-throughs — is to raise against the railway's case a ground of slender validity. It is not a ground of sufficient weight to sustain the attack on run-throughs.

The Commission is accordingly of the view that run-throughs are an appropriate and justifiable railway operation. They are not of a character inherently to be condemned. They should be instituted — in proper circumstances and under proper safeguards.

Technological Change — An Economic and Human Problem

« We are confronted with the problem of how to deal with displacement and dislocation, with the need for retraining, with the development of new skills, with the survival of an enterprise and the investment of new capital, wih material and human losses, and with the question of how to distribute new benefits between wages, social welfare and leisure. These are complex and rapidly changing issues which cannot be tackled successfully unless, first, there is mutual concern and mutual recognition of the legitimate role of each party; second, there is realization that neither the responsibility for nor the cost of adjustment can be imposed solely upon one of the parties or let fall upon the weak; and third, there is a comprehension of the need for objective analysis, for information, for prior study, for consultation and foward planning, and for a readiness to deal with realities. »

Dr. John T. Deutsch, Chairman of the Economic Council of Canada, in Proceedings of the National Conference on Labour Management Relations, Ottawa, November 9-10, 1964, page 5.

« This differentiation between beneficiaries and sufferers from technological change presents us with a moral as well as an economic problem. Society as a whole is, by and large, a beneficiary. Is it morally acceptable for most of us to enjoy the benefits of new technologies without utilizing every possible means of minimizing the losses and assisting the readjustment of those who are not beneficiaries but sufferers? Society has a moral obligation to accept the cost of necessary programs to this end as a charge against the benefits of technological advance. »

Somers, Cushman, and Weinberg, « Adjusting to Technological Change », Harper & Row, New York, 1963, p. 207.

There is much wisdom in the words above quoted, and the Commission is pleased to adopt them as the basis of its approach to the problem now being considered. So well do they define that problem and expose its implications that an extended treatment of it by the Commission is hardly necessary. This is perhaps a good thing, as the subject of technological change has already produced a vast literature, and the Commission has no desire to add greatly to its volume. In the briefest form, therefore, reference will be made to the run-through problem as an aspect of technological change having economic and social consequences.

Economists tell us that the problem of technological change is not new but that it is simply the modern form of a process as old as the Industrial Revolution, if not older. Nor is it, many of them say, a cause of unemployment; it is rather a source for the creation of new jobs. They add that when economic conditions are buoyant and the demand for labour is brisk, technological changes can be introduced without any significant disruptive effects upon the work force. It is only when the economy is sluggish and when government action has been inadequate or ineffective to strenghten it that technological innovations bring unfortunate consequences to individuals. But in such circumstances the villain is not technology, which is an instrument for industrial progress, but rather government, which failed in its responsibility to keep the economy healthy and vigorous.

This thesis is probably sound. The Commission, however, would venture an observation concerning its practical application in a specific situation. A perfectly buoyant economy in always an ideal but rarely an attainment. When such an economy does not exist (a usual situation, one might say) and technological change is introduced with disruptive consequences, a worker whose job has become redundant is likely to find little consolation in the reflection that he is a victim not of technology but of government inaction. For him the stark and immediate fact is that he is jobless. Admittedly if the total demand for labour happened to be great he could quickly move into other employment — in which case there would be less occasion for him to isolate or identify technology as the source of his trouble. Very often he might simply be reassigned to another job with the same employer. Even then, however, he might be confronted with the need to learn a new kind of work, his old skills having been made obsolete by technological advance. Taking a broad, national, long-range view and looking at employment in its totality the economists may be justified in contending that technology does not cause unemployment. Within the total picture, however, technology may bring about individual cases of difficulty and hardship, cases which will be multiplied if the general demand for labour is slack.

Moreover when a job becomes redundant the impact of the change may extend beyond those who seem immediately affected by it. A wise and benevolent employer may protect the present job holder either by retaining him in it until his retirement or by assigning him to another job. But what of the new entrant into the industry? For him the former job no longer exists. « Silent firing » is what this state of affairs is sometimes called. This new member of the labour force may perhaps have a different job available to him. But he may have to go elsewhere to obtain it, and so even in such case some hardship would result from the technological change.

That within the railroad industry in Canada technological change has been accompanied by reduced employment cannot be denied. In a submission in 1961 to a Special Committee of the Senate on Manpower and Employment, The Railway Association of Canada, of which the C.N.R. is a member, pointed out that between 1952 and 1959 the railway work force declined by 19 per cent. (It has declined further since.) The submission then added the following comment:

> « The chief factors contributing to the decline in railway employment apart from the loss of traffic to competitors, have been dieselization and other technological changes. »

This is understandably so, since the usual effect of any technological change is to reduce the labour content of a given process.

Canadian National estimated that its run-through program as presently contemplated would result in a reduction of 54 operating jobs. In addition there would be a reduction of some non-operating jobs — 16 for Nakina and Wainwright alone, as we have seen. There would also be considerable dislocation in jobs, resulting from the compulsion of men to move elsewhere to hold work. The company's estimate of such dislocated jobs resulting from the run-throughs was 147. Some of these planned run-throughs are only partial in nature, applying only to a limited number of trains. An extension of the run-through program beyond that presently contemplated would naturally increase the dimensions of the problem. Whatever may be said about basic causes, the simple fact remains that the run-throughs on the C.N. would be immediately accompanied by job reductions and job dislocations. Those are the consequences in human terms; and to eliminate or reduce their effect is the task to which cooperative efforts of management, labour, and government must be directed.

One merit of the statement of the case by the economists is that it focuses attention upon the responsibility of government to act with vigilance and wisdom in creating conditions in which technological change may safely and advantageously be introduced. In that regard the role of government is at least twofold. It must be concerned on the one hand with employment policy — that is to say, with adequate policies of economic development to increase the total demand for labour. It must be concerned on the other hand with manpower policy — that is to say, with policies of manpower training, retraining and relocation to create a flexible and mobile work force with fully developed skills.

There are many indications in Canada of government awareness of the problem. Apart from general policies designed to secure economic stability and development, there has been evolved in recent years a whole series of policies and programs aimed at providing greater protection for the individual against the challenges and threats of the technological age. The Manpower Consultative Service, for example, was set up to encourage and assist management and unions to use the techniques of joint consultation and objective research to prevent unnecessary technological unemployment. Federal government assistance is available to the extent of one half the costs incurred in such research and in the development of programs of adjustment. The Technical and Vocational Training Assistance Act helps to provide enlarged training facilities, both at the youth and adult level, for the purpose of making individuals more adaptable to changing job requirements. It operates through various federal-provincial training programs. The Manpower Mobility Program is designed to provide assistance, through loans and grants, to individuals wishing to move to employment beyond commuting distance from their homes. Other policies include the sponsorship of labour-management committees in plants and other establishments across the country, the Federal-Provincial Farm Labour Program, the Federal-Provincial Program on Civil Rehabilitation, the Capital Assistance Program, the Agricultural Rehabilitation and Development Agency, the Area Development Agency, and the War Against Poverty. These and others that might be mentioned reveal a deep commitment on the part of government to the task of meeting the challenges arising from the new technology. More can and must be done, but a good beginning has been made. In that setting, industry and labour ought the more confidently to move forward in cooperative efforts to meet the problem.

For assuredly there are responsibilities on others besides governments. There was a time, in orthodox micro-economic theory, when the entrepreneur could treat all factors of production — land, labour, capital — as commodities which could be purchased in a market. His task was simply to assemble these factors and constantly to readjust them in the combination most favourable to the profit position. A technological innovation might enable him to use less of the factors of production to achieve a given end. The introduction of the diesel locomotive is one illustration of such an innovation. It enabled old factors of production to be released, sometimes to retirement, sometimes to other uses. Steam-powered locomotives for the most part were released to scrap, and a few to grace public parks as durable monuments of solid utilitarian functionalism, if not always of aesthetic delicacy. But what happens when a technological change releases a factor of production called labour? Clearly it poses problems not so easily written off or disposed of. The old concept of labour as a commodity simply will not suffice; it is at once wrong and dangerous. Hence there is a responsibility upon the entrepreneur who introduces technological change to see that it is not effected at the expense of his working force. That is the human aspect of the technological challenge, and it must not be ignored.

There are responsibilities upon labour as well. Perhaps chief among them is not to use its organized strength in blind and wilful resistance to technological advances. Labour must recognize the constructive role of technology in the general welfare and economic strength of the nation. Nor should it insist upon unreasonably high rewards or excessive safeguards as the price of its acceptance of change. Stubborn opposition to measures of progress can only hurt the nation, labour not least of all. There is a challenge here to labour leadership. The leader of labour who by speech or pen constantly inveighs against technology and automation as enemies of man hardens attitudes of resistance among his followers, and thereby does a disservice to society.

There is a further entity to be considered. The human aspect of technological change compels a regard for the position of communities. That subject will be examined more closely in a later chapter. Here, where the problem is simply being viewed in the light of general principle, it may suffice to declare that community integrity is a national asset and that if it is needlessly destroyed or impaired the nation will be the loser. To isolate and define responsibility for preserving the integrity of communities is a subtle and intrinsic task. It is one, however, which the Commission cannot avoid and to which it will in due course turn.

In an editorial entitled « Machines and Jobs » the Winnipeg Free Press, on June 5, 1965 wrote as follows:

> « Thus, the first need in the dawning age of automation is a more enlightened and forward-looking attitude in business, labor and government, the ruling triumvirate of any modern industrial society.
>
> The basic problem, in short, is to keep a just and flexible balance between these dominant groups in their power and their demands upon a completely interdependent community. And this will call for the highest sort of statesmanship not only in the state itself but in all the other elements that support the state. »

Management's Right to Institute Run-throughs

A practical application of the need for enlightenment and statesmanship in dealing with technological change is to be found in the manner in which run-throughs are instituted.

Canadian National categorically asserts that it has the right to establish extended crew runs. When it attempted to institute the run-throughs at Nakina and Wainwright it was acting, it says, in strict accordance with its right to make and implement such a management decision. Two questions accordingly must be considered. Does Canadian National have the right, as part of its management prerogative, to institute run-throughs? If it does, should it continue to have that right? The issue posed by these questions is central to this Inquiry.

The company in its final submission contended that the scope of the Inquiry did not extend to an examination into the merits or otherwise of general theories of management, such as the theory of residual rights. The Commission takes a different view of the matter. Since the right to institute run-throughs has emerged as one of the issues in this Inquiry, anything relevant to that issue properly falls within the Commission's consideration. The doctrine of residual rights is one such matter. It was frequently referred to both in evidence and in argument, and the Commission proposes to deal with it.

Essentially the theory or doctrine of residual rights starts from the view that in the absence of a collective agreement management has general managerial rights. When a collective agreement is entered into it limits managerial rights, but only to the extent expressly stipulated in the agreement. Whatever has not been bargained away remains within management's exclusive control, in the same way as before the agreement was made. Thus, according to the doctrine, there is a residue of unaffected rights still left with management, to be exercised as part of its managerial function.

There is a deceptive allure about the doctrine. It appears to be eminently sane and reasonable. Since the property and plant belong to management who else but managment should run it and make decisions? True enough, if management by its agreement has surrendered a part of its managerial function, that part is lost to it; but the residue remains. Could anything be more logical?

In confessing to certain doubts and misgivings about the adequacy of the doctrine for the contemporary industrial scene, the Commission must in fairness record that these doubts and misgivings do not appear to have been shared by the great majority of people who have been called upon to deal with it in an official way. A study of decisions in labour arbitration cases shows a distinct numerical preponderance in favour of the validity of the doctrine. To the extent that this body of jurisprudence may be taken as having settled the law it undoubtedly furnishes impressive support for those who uphold the theory as correct. None the less the Commission still has reservations about the doctrine. It seems to treat too lightly the changes in labour-management relations which have been wrought by collective bargaining. Professor Bora Laskin (now Mr. Justice Laskin), as Chairman of the arbitration board in **United Electrical, Radio & Machine Workers of America, Local 527, & Peterboro Lock Manufacturing Co. Ltd. (1953) 4 Lab. Arb. Cas. 1499,** expressed the matter thus:

> « In this board's view, it is a very superficial generalization to contend that a collective agreement must be read as limiting an employer's precollective bargaining prerogatives only to the extent expressly stipulated. Such a generalization ignores completely the climate of employer-employee relations under a collective agreement. The change from individual to collective bargaining is a change in kind and not merely a difference in degree. The introduction of a collective bargaining regime involves the acceptance by the parties of

> assumptions which are entirely alien to an era of individual bargaining. Hence, any attempt to measure rights and duties in employer-employee relations by reference to pre-collective bargaining standards is an attempt to re-enter a world which ceased to exist. Just as the period of individual bargaining had its own common law worked out empirically over many years, so does a collective bargaining regime have a common law to be invoked to give consistency and meaning to the collective agreement on which it is based. »

This statement of the matter, although expressing a point of view at variance with that held by the great majority of arbitrators, ought not to be cavalierly dismissed. In the view of the Commission it possesses great merit and demands serious attention, the more so in an age marked by technological change.

Canadian National does not say that it relies on the theory of residual rights. Certainly during this Inquiry it seemed to be consciously avoiding any explicit identification with it — at least, with it under that name. Instead there were references to the company's « inherent » rights. What are inherent rights of management? They were not defined. Presumably they would include all those rights traditionally exercised by an entrepreneur and generally asknowledged to fall within his prerogative as owner. All those rights, that is, except such as had been lost by agreement or otherwise. If Canadian National uses the term « inherent rights » as meaning its innate, historic, or traditional rights it must also recognize that certain inroads have been made upon those rights by the collective agreements. Its inherent rights would accordingly consist of the untouched balance of those rights after allowing for the full play of the agreements. In short, its inherent rights would be its residual rights, or something very close to that. The terminology may be different but the substance is very much the same in both cases.

The company's position on the question of management's right to institute extended crew runs was conveyed to the Commission through the testimony of Mr. Norman J. MacMillan, its Executive Vice-President. He was a good witness — able, informed, articulate. Part of his testimony consisted of a written brief upon the topic. It put the company's case with lucidity and force.

Looking at Mr. MacMillan's evidence the Commission discerns a fourfold basis on which the company's case seems to rest. The company claims support for its position by virtue of (1) inherent rights, (2) contract, (3) usage, and (4) law. The first of these has already been noted. Some reference to each of the other three will now be made.

Rights under contract are in a sense the observe of inherent rights. The latter, unless the Commission has misconstrued their meaning, consist of those rights of management left unimpaired by the collective agreements. Rights under contract, on the other hand, are such as are expressly or impliedly conferred by those agreements. The company contends that the collective agreements support its claim that it is empowered to establish run-throughs. It does not say that any particular provision in so many words proclaims that the company may institute run-throughs. It argues, however, that such a power is implied from other things stated in the agreements. Thus the agreements indicate that the company has the initiative or responsibiliy to establish or change runs, assignments, or terminals. The introduction of a run-through, it says, is merely a variation of runs and terminals, and hence must be taken to fall within the company's powers under the agreement.

An agreement should be construed in such manner as will give effect to the intention of the parties. The Brotherhoods would be surprised to learn that the agreements to which

they are a party contain authorization for the company to institute run-throughs. If that is their effect it is certainly something the Brotherhoods never intended. In such circumstances a tribunal ought not to construe the agreements as producing such a result unless clearly compelled to do so by the language in which they are expressed. In the present case the Commission feels under no such compulsion, for the terms of the agreement do not clearly and necessarily confer on the company the power to establish run-throughs.

One provision of the agreements may be considered in this connection. It relates to terminals, and in the contract with the B.L.E. (Western) it is Article 6.52. It reads as follows:

> « The following stations constitute terminals within the meaning of the term and may be eliminated or added to by giving the General Chairman fifeen (15) days' notice in writing and bulletining same on the District affected over the signature of the General Superintendent of the District. »
>
> (Then follows a list of terminals.)

Should a power to establish run-throughs be implied from such a provision? The Commission thinks not. There may be various reasons for eliminating or adding terminals quite apart from run-throughs. It would be unreasonable to hold that in agreeing to a provision for 15 days' notice for the elimination or addition of terminals, the Brotherhoods had thereby consented to a power in the company to institute run-throughs. So too with other provisions in the agreement. Indeed the Commission feels that the whole issue of run-throughs has in recent years been so much in the forefront that it stands forth as a recognizable, independent topic of its own. One would expect it to be so treated in the collective agreements, if dealt with at all. It would be most surprising then to find that the parties had been entering into agreements on the subject by inadvertance, without run-throughs even being mentioned, but simply having to be implied from other provisions of a more general character. The Commission is unable to find that this is what occurred. Accordingly if management does have the right to institute extended crew runs, the source of that right must lie somewhere else than in the collective agreements.

But the relationship between management and its employees does not rest solely upon the collective agreements. The company emphasizes this point, as in fact do the Brotherhoods. And, of course, they are right. The collective agreement was never intended to be an all-embracing and exhaustive statement of the relationship. There are other things besides — things which may conveniently be grouped together under the heading of custom, usage, or practice. These are matters of importance, even though forming no part of the written agreements. From time to time both sides will quite properly invoke the authority of usage in support of a particular position. The company has invoked that authority in support of its claim that it has the right to insitute run-throughs. In the Commission's view the company is on stronger ground here.

It is a simple fact that Nakina and Wainwright were preceded by other run-throughs. These have been set forth in Chapter 3 dealing with the background of the problem. That they encountered opposition from the Brotherhoods is true. None the less these run-throughs were established, and after they were established men in the running trades worked on them. They are working on them today. In these circumstances it is hard to escape the conclusion that usage is on the side of the company.

The Commission is not overlooking the fact that the Brotherhoods on three separate occasions challenged management's right to institute the run-through and took their challenge

to the Canadian Railway Board of Adjustment No. 1. For to refer to these events is not enough; one must also refer to their outcome. In all three cases the company's position was upheld. The Brotherhoods may have disagreed with the reasons for the Board's disposition of these cases. But that is beside the point. Whatever the reasons, the Board's conclusions in favour of the company helped to establish a pattern of operations with regard to run-throughs. The company was thus enabled to say that usage supported its claim.

The same thing may be said of the unsuccessful attempt by the Brotherhoods to obtain an injunction in 1960 at the time of the Redditt run-through and again at Nakina in October, 1964. So too with regard to the attempt, on more than one occasion, of the Brotherhoods to obtain a clause in the collective agreement providing for no material change or alteration in conditions of employment during the currency of the contract except by mutual consent. The language of the clause was broad enough to embrace matters other than run-throughs; but it assuredly included run-throughs, which were the immediate occasion why such a clause was sought. But clearly a clause of that kind was unnecessary unless management had the right to institute run-throughs on its own. That the Brotherhoods sought such a clause constituted recognition of the fact that under existing usage and practice the company did have such right.

The company also says that its right to establish extended crew runs derives from law. This claim must be considered in a double sense, one positive, the other negative. The positive side would consist of the existing body of jurisprudence on the subject. It would include the decisions of the Conciliation Boards already referred to and the judgments of the courts denying the two applications for injunctions to restrain the run-through — the one at Redditt, the other at Nakina. It would also include the decisions in labour arbitration cases upholding the doctrine of residual rights. Those decisions, as already stated, constitute a decided majority of the cases in which the doctrine came up for consideration. Clearly, therefore, it must be found that existing jurisprudence, although not vast in extent, furnishes support to the position taken by the company.

The negative side of the claim is based on the fact that the statute governing the company's labour relations with its employees — namely, the Industrial Relations and Disputes Investigation Act — provided no impediment to the institution of run-throughs. This Act must now be examined, at least in its main features so far as they bear upon the issues in this Inquiry.

Reference has earlier been made to the open period and the closed period of the contract. These terms take their meaning from the form and structure of the legislation. Under the Industrial Relations and Disputes Investigation Act (certain sections of which are set forth in Appendix 6) either party to a collective agreement may, within two months before the date of its expiry, by notice require he other party to commence collective bargaining with a view to the renewal or revision of the agreement or conclusion of a new agreement. The Act requires the parties then to meet without delay and commence collective bargaining accordingly. Either party is entitled to request the Minister of Labour to provide a Conciliation Officer to help the parties conclude a collective agreement. If the Conciliation Officer should fail to bring about an agreement, the Minister may appoint a Conciliation Board for that purpose. No strike or lockout is permitted until this Board has functioned and has submitted its report to the Minister and seven days have elapsed from the date on which the Minister received this report. The so-called open period is deemed to have begun with the notice calling upon the other party to commence collective

bargaining. It continues in effect until (a) a new collective agreement has been entered into, or (b) seven days have elapsed after the Minister has received the report of a Conciliation Board, whichever is earlier. One further circumstance should be noted concerning the open period. While it is in effect the employer may not unilaterally decrease rates of wages or alter any other term or condition of employment.

The closed period commences with the making of a new collective agreement. It continues for the duration of that agreement. Under the statute such an agreement must be for a term of at least one year. (It may be mentioned that the new agreements made by the company with the Brotherhood of Locomotive Engineers and with the Brotherhood of Locomotive Firemen and Enginemen were each for a period of three years from May 1st, 1964. The agreement with the Brotherhood of Railroad Trainmen was for a period of two years from January 1st, 1964.) Two matters of significance may be observed in relation to the closed period, and these may be contrasted with the situation in the open period. With an exception not presently material, the right to strike is forbidden during the closed period. It is permitted during the open period, subject to compliance with the provisions respecting conciliation. The second matter concerns the power of an employer to alter conditions of employment. Although this is expressly prohibited during the open period, no similar provision is to be found in the Act for the closed period. Hence, except where a change in working conditions violates the provisions of a collective agreement, an employer is not prevented by the Act from altering conditions of employment.

It is in the light of these features of the Act that some of the statements made by the company take on meaning. Thus the company has said repeatedly that in establishing extended crew runs it did not violate the collective agreements or any applicable law. Quite true. For the collective agreements neither authorize nor prohibit run-throughs; they are simply silent about them. And since the agreements are silent on run-throughs, the company's institution of them in the closed period would not be a violation of the Industrial Relations and Disputes Investigation Act, even if their effect was to alter conditions of employment.

The Commission must accordingly conclude that on the basis of the law as it exists today the company does have the right, as it contends, to institute run-throughs. That conclusion at once poses a question: Should it continue to have that right?

The question here raised lies at the heart of this Inquiry. The Commission is satisfied that it must be answered only in one way. The institution of run-throughs should be a matter for negotiation. To treat it as an unfettered management prerogative will only promote unrest, undermine morale, and drive the parties farther and farther apart. In that direction lies disorder and danger. By placing run-throughs, on the other hand, within the realm of negotiation a long step will be taken towards the goal of industrial peace. More than that. Such a course will help to provide safeguards against the undue dislocation and hardship that often result from technological change.

The Commission believes that its answer is rooted in fundamental fairness. Consider the situation. A run-through program can not be developed overnight. Much prior planning for it is required. Management is the one to initiate such planning and it alone knows where the plan is to take effect and what is its proposed nature and scope. But it does not bring its plan to the bargaining table. Under the law it is not required to do so. Instead it keeps its plan in reserve, under cover, unmentioned. In that state of affairs

bargaining proceeds and a collective agreement is in due course signed. Thereafter management for the first time introduces its plan. But now the parties are in the closed period. The plan may have the effect of causing very material changes in working conditions, as was undoubtedly the case at Nakina and, to a lesser extent, at Biggar. But such a manoeuvre is not forbidden by the law, provided that the collective agreement itself is not violated. The result for the men is that they must suffer such a change in their working conditions; and this without recourse, for in the closed period strike action is forbidden. Their contract was made on the basis of one set of circumstances. Now it must be performed on the basis of another set of circumstances, devised by management alone and to which they have given no consent. There is a manifest inequity here which clamours for attention and correction.

But, it may be argued (and was in fact argued by the company) if protection against material changes in working conditions is so important to the men, why did the Brotherhoods agree to withdraw the clause providing for such protection? Why, in other words, did the Brotherhoods in their negotiations not insist upon getting this clause even if they had to strike to do so? Mr. W. P. Kelly of the Brotherhood of Railroad Trainmen gave the answer to that question, and the Commission found his answer to be persuasive.

Mr. Kelly prefaced his answer by saying that he never thought he would one day be in a witness box having to explain why the Brotherhoods dit **not** strike. Then, dealing with the question itself, he pointed out that when the current contract was being negotiated at the end of 1963, no specific run-through was facing the men. To call a strike about a hypothetical matter which might not actually occur would be foolhardy, and would certainly be branded by the public as irresponsible. Moreover the impact of a run-through did not in any sense fall upon all Brotherhood members equally. Some would be seriously affected, others slightly so, and, of course, many not at all. In such circumstances it would be no easy matter to secure general support for a strike, especially with no actual run-through announced. Then, too, there was some hope of action through Parliament to remedy the problem. Although an earlier Conciliation Board had rejected the Brotherhood's request for such a protective clause its Chairman had specifically declared that the solution to the problem of technological change might have to come from Parliament itself. Also, more recently, the Standing Committee on Railways, Canals and Telegraph Lines had reported favourably on Bill C-15 introduced by Mr. Fisher, which was aimed at protecting the rights of railway employees in various situations, including specifically run-throughs. In view of all these matters Mr. Kelly did not feel that resort to the ultimate sanction of strike action was warranted, and the clause was accordingly not insisted upon but was withdrawn. Again the Commission would say that this explanation is reasonable and persuasive.

Run-throughs should be negotiated. It is worth noting that in the United States they are negotiated. Counsel for the company has warned that the American experience should not be regarded as a safe guide. In the first place, he states, conditions there are different. Railroads in the main are compelled to negotiate the issue of interdivisional runs; they have not the same freedom in that regard as has the company. For in the United States railroad seniority districts are usually coextensive with railway operating divisions. American collective agreements normally contain prohibitons against crews operating beyond their seniority districts. If a railway wishes to set up runs with employees operating over more than one division, it must first overcome the prohibition in the agreement, and hence must negotiate. Therefore, counsel says, American railways have been working from the opposite end of the problem from that which exists in Canada. At least from that which exists on Canadian

National, the Commission would add, since, as earlier noted, the situation on the Canadian Pacific Railway appears in some degree to be different from that on the C.N.

That conditions in the United States are not parallel with those on Canadian National may well be the case. The fact remains, however, that American railways are quite able to function under a system in which, voluntarily or otherwise, they negotiate the issue of interdivisional runs. No doubt they would prefer to have unlimited freedom to establish such runs at their own discretion, since no manager welcomes with enthusiasm any restriction upon his sphere of action. The point of significance is, however, that they manage to carry on despite the necessity of negotiation — which suggests that fears conjured up by management about the dire consequences that would result from any interference with its unilaterial right to institute run-throughs are largely groundless.

Nor should it be thought that all railroads in the United States stand in exactly the same position with regard to run-throughs. Many of them, it is true, are prevented by agreement or rule from establishing interdivisional runs. Others, on the other hand, are not so restricted. So far as concerns only matters of contract those in this latter group are deemed to possess the right to institute run-throughs. But when they seek to exercise this right they have to take into account a different kind of barrier, namely, one imposed not by contract but by law. Mr. L. S. Loomis, of Cleveland, Ohio, Assistant Grand Chief Engineer of the Brotherhood of Locomotive Engineers, explained the matter in the course of his testimony thus: Run-throughs normally bring about a change in working conditions. But by the seventh clause of Section 2 of The Railway Labour Act no carrier is permitted to change the working conditions of its employees as a class, except in the manner prescribed in the agreement or in Section 6 of the Act. Assuming that the agreement was silent on the subject, Section 6 would come into play. That section provides in such circumstances for notice to be given to the representative of the employees, for the holding of a conference in an effort to arrive at agreement, and for the right of either party to invoke the services of the National Mediation Board. In other words, negotiation would take place. So it may be said that in the United States railroads do no have a unilateral right to establish extended crew runs but that, either as a result of contract or through operation of law, they are required to negotiate about them.

Before the Presidential Railroad Commission headed by Judge Simon H. Rifkind the carriers proposed the elimination of all agreements, rules, regulations, interpretations, and practices, however established, which prohibited or restricted their right to establish interdivisional runs. The Brotherhoods (therein referred to as the Organizations) objected to this proposal. The Report of that Commission, published in 1962, had this to say on the matter:

> « We are in sympathy with the Organizations' view that the institution of interdivisional service and the conditions relating to its establishment are legitimate subjects for collective bargaining. Therefore, we reject the proposal of the Carriers insofar as it would give management nonreviewable discretion to establish interdivisional service. »

Nonreviewable discretion to establish interdivisional service is essentially what Canadian National now has, and what it should not have.

With run-throughs continuing to be a matter for negotiation in the United States it is of interest to note the wide scope which those negotiations cover. Mr. Loomis brought before

the Commission specific illustrations of agreements on the subject beween railroads and the Brotherhoods. Their range is comprehensive indeed. Counsel for the Brotherhoods in his final summation listed some of the matters covered. They include the following:

—Compensation for losses on homes by men having to relocate themselves;
—moving expenses, varying from a bulk payment to the actual demonstrated expenses involved;
—eating en route;
—preservation of the basic day concept;
—payment for excessive time lost while « sitting » at the terminal which had been run through;
—provisions for switching rules;
—run-through operations involving two districts of two railroads;
—adjustment of road mileage for compensatory purposes;
—initial and final terminal delays;
—sleeping accommodation;
—specific application of certain run-throughs recognizing attrition in certain limited situations;
—restrictions against picking up and setting off in certain localities so as to ensure the expedition of freight traffic;
—negotiation of interdivisional runs resulting from the merger of two or more railways;
—consolidation of seniority districts;
—provision for handling perishable commodities;
—provision for pilots and for learning the road;
—provision for deadheading;
—transportation to on and off duty points.

The foregoing list indicates in an impressive and unchallengeable way that negotiation can play a fruitful role in the run-through issue.

One further aspect of Mr. Loomis's testimony is worthy of attention. He stated that he was unaware of a single strike in the United States which owed its origin solely to a dispute about a run-through.

In advocating the negotiation of run-throughs the Commission has in mind something more than mere discussion. At Nakima and Wainwright the scope of permissible discussion was very much restricted, as the Commission has already found. What is required if the men are not to feel that they are victims of a plan instead of participants in it is negotiation on a basis of parity. Mr. N. J. MacMillan in the course of his testimony said that negotiation necessarily carries with it a right of veto. The Commission has little doubt that Mr. MacMillan was here sounding a warning of alarm. Duly warned though it is the Commission is not greatly alarmed by the prospect of run-throughs being made a subject of negotiation. A power of veto is not necessarily and inherently a vicious thing. It is the irresponsible abuse of that power which is vicious and should be condemned. The term « veto » may have a sinister connotation in an international setting dominated by a cold war. But after all, is it not something which is encountered every day whenever two contracting parties sit down to arrive at an acceptable meeting of minds? One party puts forward a suggestion. The other party may accept it, or may reject it, or perhaps accept it in a qualified form. In either of the last two instances the second party may be described as having exercised a veto. But that is precisely what occurs in the normal process of give and

take in every bargaining situation preceding the formation of a contract. Only normally we do not stigmatize the process by applying to it the loaded term, veto.

Certainly there is a risk that the power of negotiation might be abused. The Commission believes that risk should be taken — for at least three reasons. The first is that reasonable safeguards are discernible against the likelihood that the power would be improperly used. The record of the operating Brotherhoods is hardly one of irresponsibility. During the Inquiry the company filed a statement listing the work stoppages, both legal and illegal, which had occurred on Canadian National during the past 25 years. Apart from the Nakina and Wainwright affair the men in the operating Brotherhoods were involved in only three work stoppages, all of a local and relatively minor character. One concerned men in the B.L.E. at Montreal, 90 of whom participated in an illegal walkout which lasted approximately 24 hours. The second involved about 65 men of the B.L.E. and the B.L.F. & E. at Vancouver who took part in an illegal work stoppage lasting about 48 hours. The third related to the B.R.T. and was marked by an illegal sympathy strike on the part of 80 men at Vancouver. It lasted 27 hours. A detailed investigation of the claims and conterclaims lying behind these three episodes was not undertaken, as it would have led the Commission into unnecessary by-paths, away from the road on which it was proceeding. It remains only to add that none of the three was related to the run-through problem ; and that in their aggregate they represent comparatively minor blemishes on a record which, over a period of a quarter of a century, was characterized by reasonableness and responsibility.

A second reason for taking the risk of negotiation derives from considerations of self-interest. It is surely important to the Brotherhoods that the railway undertaking of which they are a part should be viable and progressive. In its economic well-being they have a personal stake. Enlightened self-interest accordingly demands that they should not stand in the way of its development and progress. Run-throughs, as the Commission has already found, have a role to play in that development, and their institution should not be senselessly blocked. That the Brotherhoods, despite their known lack of enthusiasm for run-throughs, would cooperate in a run-through program if it were made a negotiating matter is indicated by the following direct exchange which took place between Mr. Macdougall, counsel for the company, and Mr. W. P Kelly :

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« Q. But you are not against the institution of run-throughs ?

A. We are not opposed to change ; we know there is change, but we want some status to sit down and negotiate when it affects the conditions of the men we represent. »

Self-interest, too, should operate as a brake upon the possible abuse of the negotiating power. For the Brotherhoods will understand that if they acquire this power it will only be because of faith that they will exercise it reasonably and responsibly ; and that they will be expected to exercise it in that way and no other. They need hardly be reminded that a power given may also be withdrawn.

There is yet another reason why the Commission recommends the taking of the risk. The alternative is worse. If run-throughs are allowed to remain as a managerial prerogative the men will simply continue to feel that they are victims of technology, inert instruments in a process beyond their control. Such a situation is fraught with danger. A mood of rebellion, already confronted in Nakina and Wainwright, may arise again. No one wants

to see the law flouted. Wildcat strikes are at once a defiance of law and a threat to industrial peace. As such they are to be condemned, and the Commission does condemn them. But how is their recurrence to be avoided? Surely not by turning one's back on something which has proved to be a contributing factor in their development and pretending it does not exist. The present situation governing the manner in which extended crew runs are instituted has been shown to be unfair. A thing which is unfair should be corrected, not perpetuated. Risk for risk, the Commission sees greater danger in failing to correct this unfairness than in acting to bring run-throughs within the realm of negotiation.

A change from unilateral control to negotiation would bring with it advantages of a positive kind. It would lessen the possibility that the benefits from a run-through program would fall largely on one side and its disadvantages largely on the other. It would strengthen the operational aspects of the run-through actually put into effect, since the men who are daily concerned with the running of trains would be able, through their representatives, to contribute ideas and suggestions to the common pool. And it would improve the climate of labour-management relations and boost morale by the mere process of acknowledging the dignity of the individual worker and according to him a voice in decisions affecting the conditions under which he is to work.

None of this involves the renunciation by management of its managerial role. That role is being performed today in the context of collective bargaining. Management still manages the business, but periodically it sits down with the representatives of the men and negotiates about wages and conditions of employment. What this Commission suggests is that the subject of run-throughs, affecting as it does the working conditions of the men, also belongs within the area of negotiation.

But what happens if in the negotiations the parties are ultimately unable to agree? One hopes that such occasions would be rare; but since even the most reasonable of men sometimes disagree, a mechanism for resolving such unsettled disputes must be devised.

The two familiar instruments for dealing with unresolved disputes — namely, arbitration and strike or lockout action — received some attention during the Commission's hearings, and something must be said about them. Each has aspects both of strength and of weakness.

Arbitration — and the Commission is here referring to the imposed, obligatory, compulsory type — possesses certain features which tend to make it attractive in the public eye as a mode of settling labour disputes. Foremost among them is its enshrinement of the principle of third party decision. When two disputants are unable to agree it is at once appropriate and fair that the issue between them should be resolved by third party arbitrament. A society which esteems the principle of the rule of law and its daily expression through the judicial process is bound to look with favour upon arbitration as a method of bringing unsettled disputes to a conclusion. And not entirely without reason — for the feature of independent judgment by a third party does endow arbiration with positive merit.

But arbitration is subject to certain weaknesses as well. The literature on labour relations abounds in indictments of it, both from the side of labour and of management. The main arguments against arbitration were summarized in the excellent brief submitted by the Canadian Labour Congress. In the first place, the very existence of arbitration as the ultimate solvent tends to impair the bargaining process itself and rob it of meaning.

It discourages, in the words of the American economist, Professor George W. Taylor, the making of those offers and counter-offers without which these is no negotiation. An employer will hesitate to make an offer which the union may use not as a starting point for agreement but as a springboard for arbitration. A union may well feel that not even a so-called final offer should be accepted, since in compulsory arbitration it would not likely get less and might get more. The aim of ordinary collective bargaining is to settle issues by a meeting of minds. With arbitration looming ahead, however, collective bargaining will tend to be a mere intermediate step along the way to the arbitrator's decision. Such a decision is not the moral equivalent of an agreement. In the language of the C.L.C.'s brief, « It is not enough to close a dispute. This may simply provide an armistice where a peace treaty is required ».

There is also a practical objection to compulosry arbitration. It does not always succeed in doing away with strikes; it merely makes them illegal.

Compulsory arbitration has been assigned a role under the Industrial Relations and Disputes Investigation Act, but it is the limited one of settling differences concerning the meaning or violation of a collective agreement. It has not been given a place in the formation of such an agreement, the intent of the legislation being that the parties themselves, aided where necessary by conciliation machinery, should reach a consensus on wages and terms or conditions of employment through the ordinary process of collective bargaining.

As for the strike or lockout it is important to keep in mind that they are forms of action sanctioned by law. Provided there has been compliance with the statutory requirements relating to conciliation, management may cause a lockout of employees or employees may exercise the right to strike. It is unnecessary to embark upon a consideration of the strike or lockout in their general aspects, except to say that these rights are accepted as the calculated risks of a free society. What is of immediate concern is the wisdom or otherwise of making these economic sanctions available for the settlement of unresolved disputes concerning run-throughs. In terms of the present law that would mean making them available during the closed period, since they are already so in the open period. Or it might mean the confining of negotiation on run-throughs to the open period only.

The arguments cited above against compulsory arbitration constitute in a sense the case in favour of strike or lockout action. But there is a case on the other side also. For if the parties could resort to economic force during the life of an agreement, the peace and stability which such an agreement is designed to produce would be threatened.

With something to be said for and against both arbitration and economic force, perhaps there is a place for both of them in the run-through problem. The Commission feels that both can be employed. To better appreciate the role which the Commission would assign to each of them a few preliminary words of explanation may be helpful.

Let it be remembered that the protective clause which the Brotherhoods unsuccessfully sought for inclusion in the collective agreement stipulated that no material change in working conditions should be made except by mutual consent. The word « material » must be especially emphasized. Not every change was feared, but only a material change. Admittedly the clause was a product of an age of technological advance. In such an age and under the spur of scientific progress, innovations might be made of such a character as to alter materially the working conditions which were in effect at the time when a

collective agreement was entered into. But not every technological advance would have this effect. The impact of some might be minimal in extent or significance. These would not qualify as innovations producing a material change in working conditons, and they could accordngly proceed without the need of mutual consent. If this were not so an unnecessary restriction would be imposed that could hamstring progress.

So too with run-throughs. They are not all equal in their effects. One run-through may have serious consequences for an appreciable number of men. Another run-through may have virtually no impact at all, or possibly have a slight impact on so few men that in either case it should not be regarded in the same category as the first one. The first materially alters the working conditions which were in effect when the contract was made; the second does not. It should not be beyond the capacity of a reasonable and impartial mind to decide whether a particular run-through falls into the one class or the other.

Here then is the Commission's recommendation in the matter. Run-throughs, as already stated, should be negotiated. But in the course of those negotiations either party should have the right to refer to an arbitrator the question whether the proposed run-through falls in the former class or the latter. If the arbitrator should conclude that it is in the latter class — that is to say, that its effect is so relatively slight that it cannot fairly be described as causing a material change in working conditions — the company would at once be entitled to put its run-through plan into effect. If, on the other hand, the arbitrator should decide that the impact of the suggested run-through would indeed cause a material change in working conditions, the company would be obliged (unless it could secure Brotherhood consent) to withdraw its plan until the next open period. At that open period negotiation could proceed subject to the legally available sanction of the strike and lockout. Incidentally, a run-through plan which is being established in periodic instalments would have to be assessed on the basis of its total effect rather than in terms of its individual stages considered separately.

It will be seen that the role proposed for arbitration is a very restricted one. The arbitrator would not enter the arena of collective bargaining. His sole function would be to assess the effect of the company's plan upon the working conditions of the men, with a view to determining whether such effect would be material or otherwise. The mechanism of this limited form of arbitration is recommended by the Commission in order that the company should not be unduly impeded in establishing a run-through whose impact on working conditions would be insignificant. It is quite possible, one should add, that resort to arbitration would in actual practice not be necessary, at least in a clear case where the effect of a run-through could be seen to be minimal. In such a case the very existence of this machinery of arbitration might itself be a factor inducing agreement by the parties.

On the other hand any run-through which causes material changes in working conditions should be negotiated under circumstances where both sides come to the conference table with their power and strength unimpaired. Under the law as it stands at present the discussion of a proposed run-through comes at a time when management has the right to change working conditions in any manner not in violation of the agreement, but the men have not the right to resort to economic force. The recommendation is intended to do away with this inequality and put the parties on a basis of parity. Again in actual practice resort to the mechanism here recommended might not be necessary. For one thing the company might well begin to introduce its run-through plans during the open period, since the present advantages of introducing them in the closed period would no longer be available

to it. Then too, even if a run-through plan were introduced in the closed period, agreement upon it might be reached without the necessity of deferring negotiations to the next open period. The company might wish to avoid such delay; it would fully understand that when the open period arrived both parties would be able to negotiate from strength; therefore, it might say, let the negotiation of the run-through go ahead at once on the same basis as it would inevitably have to be conducted later. The result accordingly would be genuine negotiation of run-throughs — not the restricted form of discussion between unequals which exists today.

So much for the Commission's recommendation in terms of principle. A word must be added on the matter of detail or mechanics for giving effect to that principle.

Beyond doubt the simplest and most effective method for that purpose would be voluntary agreement between the parties. If the company and the Brotherhoods could agree on a clause providing for no material change in working conditions without mutual consent, the objective of the recommendation would be substantially achieved. Till now they have been unable to agree. It may be, however, that agreement is still possible, especially in the light of intervening events.

Assuming that agreement can not be reached, legislation would be required to give effect to the recommendation. The Commission here sets forth certain matters that would have to be taken into account in that regard. The first is notice. Since this would no longer be notice that a run-through was being established on a named date but rather notice prelimany to negotiation, it would not need to be of great length. The Commission believes that 30 days' notice would be ample. The notice should, of course, be accompanied by adequate details of the company's proposal.

The right of arbitration, for a limited purpose, has been suggested. In the view of the Commission the arbitration function, if invoked at all, should be performed by a single arbitrator. He should be agreed upon by the parties, or failing agreement, should be designated by the Minister of Labour.

Finally there is the matter of negotiating the run-through on the basis of parity. The recommendation contemplates the deferral of negotiations to the next open period, unless the Brotherhoods otherwise consent. What legislative instrument should be utilized to give effect to the recommendation? Two vehicles possibly available for that purpose are the Railway Act and the Industrial Relations and Disputes Investigation Act. The former is of special concern to the railroad industry, while the latter is of more general application. If the Railway Act were used, an amendment incorporating the Commission's recommendation would necessarily be expressed in language appropriate to the specific railway situation. If, on the other hand, the amendment were sought through the Industrial Relations and Disputes Investigation Act, it could and would be expressed in more general terms. For example, the principle embodied in Sub-section 2 of Section 22 of the I.R.D.I. Act could be adapted and applied. That Sub-section contains the sole exception to the rule forbidding strikes and lockouts during the closed period. It provided that parties may by their collective agreement reserve a particular issue for later consideration, and still retain the right of strike or lockout with respect to a settlement on that issue, after compliance with the compulsory conciliation provisions of the Act. Similarly it would be possible to provide, by an appropriate amendment, that any technological innovation, development, or change proposed by the employer which would materially and adversely affect the working

conditions of the employees should either be deferred for negotiation at the next open period, or be dealt with in the same way as if it were a provision falling within the scope of Sub-section 2 of Section 22 of the Act. Amendment through the Industrial Relations and Disputes Investigation Act would have the advantage of closing a gap in the statute which technological advance has revealed.

It remains only to add that the Commission does not go bail for the specific language which was employed above in its suggestion of the kind of amendment which might be made. Nor does it conceive it to be part of its function to draft the suggested amendment in precise legal form. That task can be better performed by appropriate law officers of the Crown possessing special skills in that area.

Obligations Resulting from Run-throughs

53. The Commission is of the view that an obligation rests upon the company to take reasonable steps towards minimizing the adverse effects which a run-through may have upon its employees. That obligation has its root in the principle that when a technological change is introduced the cost of reasonable proposals to protect employees from its adverse consequences is a proper charge against its benefits and savings. Apart from the advantage of expediting traffic the company's run-through program would yield monetary savings of nearly a million dollars a year. It is proper that the cost of protective measures for employees hurt by the run-through should be charged against the savings resulting from it. Admittedly this would reduce those savings, but only at the beginning, for the savings would be recurring while the protective costs would not.

54. On the issue of providing compensation for losses on real estate the Commission has reached the conclusion that the company's present policy is unsuited to the contemporary industrial scene. A technological advance whose benefits accrue to the employer but whose burdens fall on the employee is unacceptable in a society which is concerned about human welfare.

The Commission accordingly recommends that any employee who is required to change his place of residence as a result of a run-through should be compensated by the company for financial loss suffered in the sale of his home for less than its fair value. Fair value should be determined as of a date sufficiently prior to the announcement of the run-through to be unaffected thereby. Any dispute on value should be resolved by a majority decision of an evaluating committee of three persons, one designated by the company, a second designated by the employee or his authorized representative, and the third designated by the two first named. The company should in every case have a right in priority to anyone else to purchase the home at its fair value as so determined.

If the dislocated employee is not a home owner but occupies his residence under an unexpired lease he should be protected by the company from monetary loss arising from the need to terminate it.

55. On the issue of moving costs arising from run-throughs the Commission recommends that moving privileges for household goods be on a door-to-door rather than, as now, on a station-to-station basis.

56. Run-throughs would make some jobs redundant. The question of severance pay accordingly arises for men who are not continued in the company's employ after the run-throughs have gone into effect.

In the view of the Commission severance pay should be available to employees who cease to be employed by the company as a result of the institution of a run-through. As to the manner in which that right should be given practical expression the Commission believes there is guidance in a hitherto unused statute, namely, the Canadian National—Canadian Pacific Act. That statute, enacted in 1933, was designed to effect economies and more remunerative operation of the two railway systems by the adoption of cooperative measures, plans, and arrangements between them. In 1939 the Act was amended to provide for severance pay, or alternatively for a lump sum separation allowance.

The cooperative measures, plans, or arrangements between the two railway systems to effect economies and more remunerative operations were never undertaken. What has happened instead is that economies and more remunerative operations have been independently sought by the railways through the medium of technology. Is it fair that the protection which an employee would have had under cooperation should be denied him under dieselization? In the Commission's view an employee who has served the company for at least one year and who loses his employment with the company by reason of a run-through should be entitled to receive severance pay or a lump sum separation allowance along the lines set forth in the C.N.-C.P. Act. (See p. 107 of this Report)

57. Protection of employees of the company is one thing; protection of communities is quite another. What obligation, if any, does the company owe to them?

The Commission knows of no ground of company responsibility to communities other than that of good corporate citizenship, a ground which Canadian National itself acknowledges. It has no basis in law, it is unenforceable, and it has very distinct limits. But in the concept of a good society it does exist, and it can function as an operating principle.

58. The Commission agrees with Canadian National that the translation of the duty of good corporate citizenship into action requires particular attention to certain specific matters. Timing is one. The extent of the impact on a community becomes a major factor in determining the time when a technological or organizational change should be introduced. Phasing is another. To enable a community to adjust to the effects of change and to reduce as much as possible the impact upon it, the program should be introduced in gradual stages spread over as long a time as possible. A further matter is advance notice. It is desirable that communities be given as much advance notice as possible of decisions likely to affect them. Finally technical assistance to the community should be provided. This may take various forms, such as cooperating with town officials in efforts to attract new industry to the town, as well as preparing industrial surveys of the town's facilities and commercial potentialities.

59. Canadian National cites its conduct at Stratford, Ontario, when it was decided to close the motive power shop there. The Commission agrees that the company may point with pride to its relations with the community of Stratford. But its relations with Nakina and with Biggar, as the Commission earlier indicated, entitle it to less applause. This is not a criticism of the company's policy but rather of the fact that in the 1964 run-through situation the policy was not applied in the same spirit or with the same care as it had been at Stratford.

Perhaps this was due to the fact that, at least with regard to run-throughs, two contradictory policies of the company were warring for supremacy. One was the policy of

giving advance notice to communities and keeping them closely informed of the company's plans. There was, however, another. It was a policy of silence, and it was deliberately adopted because of the belief that early communication with communities would simply stir up agitation, unrest, fears, and protests. Under this second policy the company would withhold announcement of its plans until comparatively shortly before it had definitely determined to put them into effect. In the Commission's view the second policy, that of silence, is wrong. Communities likely to be affected by company action are already apprehensive, whether informed by the company or not. The Commission accordingly expresses its approval of the first policy, its disapproval of the second.

60. Canadian National accepts the duty of good corporate citizenship, and its published policy statements show that it understands its dimensions and how it may be carried out. If the company's performance keeps pace with its officially declared objectives communities will have little cause for complaint.

61. It should not be thought that labour stands free of any obligation to communities. Good union citizenship is no less requisite than the corresponding duty placed upon corporations. It involves a recognition that change is a law of life and that stubborn resistance to technological advance hurts everyone, labour included. What is required therefore is cooperation, adaptation, and adjustability. Towards communities this may entail a greater willingness on the part of the Brotherhoods to accommodate themselves to the exigencies of a run-through program that has been established. Complaint was expressed in the brief of the Sioux Lookout Chamber of Commerce that the engine crew Brotherhoods showed inadequate concern for the interests of Sioux Lookout when 34 of their members moved from that town to Winnipeg at the time of the 1960 Redditt run-through. That complaint has some merit, the Commission believes.

There is a further area in which union conduct could be of assistance not only as regards communities but also generally. This relates to the matter of seniority. Some references to its operation suggest that it contains certain rigidities. Here is something which can be dealt with only on the initiative of the Brotherhoods themselves. It is the Commission's recommendation that the Brotherhoods should survey the seniority system by which their men are governed, with a view to introducing a greater degree of flexibility in it, consistent with the general purpose which that system is designed to serve.

62. It may not always be enough to rely on good corporate citizenship and good union citizenship alone. They may need some reinforcement. That reinforcement would have to come from government.

If a town collapses because of a lost market for the product of its only industry, or if the resource upon which its life depends is exhausted, government responsibility for taking appropriate remedial action is usually taken for granted. A similar responsibility should be assigned to it when adverse effects on a community result or are likely to result from changes in plant or personnel for the less dramatic but equally understandable reason of industrial efficiency. The Commission has no difficulty in declaring that there is a government obligation towards communities whose existence or stability is threatened by a run-through or its consequences.

63. Concerning the manner in which this obligation to communities should be discharged, two distinct stages of the run-through problem must be noted. The first occurs when a run-

through is to be instituted; the second arises after the run-through has been put into effect. The problems associated with each stage are different.

64. Factors to be considered in the first stage are notice and adequate time for adjustment. The Commission has already recommended the giving of 30 days' notice by the company to the Brotherhoods as a prelude to negotiation. It would seem appropriate that a similar notice be given by the company to the proper officer of the affected community or communities. The Commission recommends that within this 30-day period the community should have the right to apply to the Board of Transport Commissioners for Canada for a hearing upon the company's run-through proposal.

The essential purpose of such a hearing would be to consider whether the company's proposed timing and phasing of its plan were reasonable or not. The Board would consider the probable impact on the community of the proposed run-through with a view to determining not **if** the run-through should be introduced at all but rather **how** and **when** it should be introduced. Upon the hearing the Board would be empowered to do one of three things. It could, first of all, direct that the company's plan proceed as scheduled. Presumably it would so act in those cases where it felt either that the impact on a community would be slight or that everything possible was being done to reduce its effects to the minimum. Secondly, it could direct that the plan proceed as scheduled but with modifications. Thirdly, the Board could direct that the run-through be delayed in whole or in part for such time as it thought fit and that it be instituted at the end of that time. In an appropriate case it could also order that after the lapse of the period of delay the matter be reconsidered.

What is the position if the Board follows the third course and orders delay? It would be unfair to the company if it had to forfeit the monetary advantage it would have obtained had its run-through proposal gone ahead as planned. If public policy requires delay, public policy should pay for that delay. In practical terms this means that the company should be reimbursed from Federal public funds for such pecuniary loss as it is compelled to sustain because of compliance with the Board's order imposing delay; and the Commission recommends accordingly. Such reimbursement would in no manner be a « subsidy » to the company, since if left free to introduce the change on its own initiative and meet the costs associated therewith it would reap a benefit equal to the calculated payment.

The Commission has suggested the Board of Transport Commissioners for Canada as the body to deal with these applications by communities. There is another body, not yet formally established, which might be alternatively considered for that purpose — namely, the proposed Branch Line Rationalization Authority recommended in the Report of the Royal Commission on Transportation. If so, it would perhaps be desirable to change its name from Branch Line Rationalization Authority to Railway Rationalization Authority, or some other more general designation

65. After a run-through has been instituted there would still be a responsibility on the part of the nation towards an affected community. That responsibility would arise both at the Provincial and the Federal level. Reference has already been made to the role that government must play in developing effective employment and manpower policies to reduce the disruptive effects which technological changes may bring. One specific function that government can perform is to cooperate with the municipal authorities in efforts to find an

alternative industry to fill the gap created by the run-through. The industrial development and research facilities possessed by government could certainly be put to use for that purpose.

66. There is no certainty, however, that a suitable alternative industry would be found for the town. Indeed it is simple realism to accept the fact that in some cases this will not be possible. In such circumstances it would be idle for government to seek by artificial supports to maintain the town at its former level. Far better instead to recognize that the town may have to occupy a smaller constituent place in the life of the nation. To ease the transition to that smaller role government can still do several things. Action to place the town's municipal or debenture debt on a more realistic and equitable level would not be beyond the competence of the Province concerned. Then, too, wise policies at both the national and local level of retraining and resettlement — marked by adequate moving and relocation allowances — would be of great assistance to those individuals whose economic future in the town has been extinguished by the operating change.

67. The Commission has here assigned to the company, the unions, and the nation some degree of responsibility for the welfare of communities. That responsibility, however, has limits. It does not in any sense require the perpetuation of the community in its existing state. Regrettably such a condition cannot be guaranteed. For what is involved is a conflict of rights — the right of the company to institute change in the interests of efficiency and economy; the right of the community to carry on as it was — and the need to secure the most equitable reconciliation between them. To say that the community must never become the subject of a run-through would be a denial of the rights of the company. It would also be economically wasteful. A community whose status is dependent on obsolete technology cannot rightfully expect to be perpetuated for all time and at any cost. Hence, in suggesting safeguards for communities, the Commission's purpose has been not to prevent run-throughs but only to delay them for a reasonable period to allow for adjustment to their effects.

One furthur matter must be considered, even if only briefly. The Commission's terms of reference require it to report its findings on and recommendations for application not only to the industrial situation affecting the two terminals of Nakina and Wainwright but also « for general application to similar situations arising in future ». What do the quoted words mean ?

Two views were pressed upon the Commission. One was that the words admitted only of a narrow construction, and that « similar situations » could accordingly mean similar run-throughs and nothing else. The other view was that the words could and should be given a broader construction, and that while they certainly included run-throughs they also embraced other situations similar in their general nature and effect. The Commission prefers the second view. The relationship between run-throughs and technology has been repeatedly stressed throughout this Report. The Commission believes there is such a relationship. To say that nothing here written can have application to technological changes other than run-throughs would be to deny the existence of that relationship. The Commission does not believe that its terms of reference oblige it to ignore the context in which the run-through problem is situated and from which it emerged. Its report accordingly is intended to apply not only to run-throughs but also, wherever it can be so applied, to similar situations in general. To predict what such similar situations might be and how they might in the future

arise would, however, be a perilous adventure which the Commission does not feel called upon to undertake.

One last word. The findings and conclusions of the Commission have sometimes favoured one side, sometimes the other. Neither the company nor the Brotherhoods have escaped criticism. Even the law has been criticized and found to need correction. What happens now? Much will depend on the company and the Brotherhoods, the two parties who played the central roles in the controversy. Each must be prepared to yield something in the interests of future industrial peace. The company must adjust to the idea, unpalatable perhaps but necessary, that run-throughs should be negotiated. The Brotherhoods must give up any notion that run-throughs are improper and should approach the negotiation of them with reason and responsibility. In that spirit of cooperation and mutual trust the cause of the company, the men, and the nation can be properly served and advanced.