

afoul of potentially a constitutional issue. And, frankly, I don't know. I think we all would be illuminated by the Attorney General's opinions on that subject. There are a couple of competing values at play. Number one, the courts have a tendency to defer making any decision until such times as there is an exhaustion of administrative remedy. Senator Kristensen, I think, would support that notion. The courts will exercise themselves very great restraint to see to it that administrative procedures which are there for the resolution of conflict have run. They, themselves, will choose not to act until those have run, and that is a very commonly accepted duty. If there is a mechanism, whether it is a recommendation or whether it is a decision, actually the courts I think will do whatever will get to the same result. They are likely not to intervene until whatever arbitration system we have acts. Secondly, the alternative mechanisms for decision-making in this case will probably have the same difficulty as what you described. They are arbitration methods, whether it is a Governor's representative, whether it is a mutually chosen third party. That is, what, an Administrative Procedures Act decision, although it is not from an administrative agency. It is from a decision of arbitration. I think our analysis should be this, go forward with the Attorney General's letter, let's see what he says. But the results achieved by this amendment duplicate the restraint that is showed by district court in exactly this kind of setting anyway. They have a tendency to wait until these kinds of bodies act, and the existence of these bodies are for the purpose of getting both parties to say, I can live with that result and not go to court. The ultimate decision I think will be in district court, it is true. You raised a fair question as to whether this constitutes a decision. Perhaps there is a constitutional conflict between raising this recommendation to the level of a decision for the purposes of the Administrative Procedures Act. I would say that is a point well taken and the Attorney General should continue to opine and be queried on the point. But as to the ultimate result of the process, I think it is exactly what a court is likely to choose to do, and that is to wait for any informal or formal administrative form of recommendation so the court's time is not spent in deciding these issues.

SENATOR LABEDZ: Senator Warner, before you go on, the call is raised.

SENATOR WARNER: Mr. President, Madam President, what I wish to