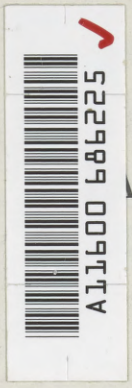
TO ALLOW JOINT INDUSTRY PROMOTION FUNDS



HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON
ABOR AND PUBLIC WELFARE
UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S. 3149

TO AMEND SECTION 302(c) OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, TO PERMIT EMPLOYER CONTRIBUTIONS FOR JOINT INDUSTRY PROMOTION OF PRODUCTS IN CERTAIN INSTANCES OR A JOINT COMMITTEE OR JOINT BOARD EMPOWERED TO INTERPRET PROVISIONS OF COLLECTIVE-BARGAINING AGREEMENTS

MAY 21 AND JULY 15, 1968

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Committee on Labor and Public Welfare

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TO ALLOW JOINT INDUSTRY PROMOTION FUNDS

TUESDAY, MAY 21, 1968

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Ralph W. Yarborough (chairman of the subcommittee) presiding.

Present: Senators Yarborough (presiding) and Fannin.

Committee staff present: Robert O. Harris, counsel to the subcommittee; and Eugene Mittelman, minority counsel.

Senator YARBOROUGH. The Subcommittee on Labor will come to order.

We are holding hearings today on my proposal, S. 3149, a bill to amend the Labor-Management Relations Act in order to allow management and labor to bargain collectively over the establishment of jointly administered industry promotion funds and programs for joint committee or joint boards empowered to interpret and decide arbitration cases arising out of the provisions of collective bargaining agreements.

Section 302 of the Labor-Management Relations Act, the portion being restrictions on payments to employee representatives, prohibits all payments by employers to employee representatives for purposes of this section unless they are specifically excepted in this section.

The purposes of this section are to eliminate bribery, extortion, shakedowns, "sweetheart contracts," and other corrupt practices and to protect the interests of beneficiaries of lawful employer supported funds.

Among the lawful funds are those established for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational accidents or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance, pooled vacations, holiday, severance or similar benefits, or apprenticeship or other training programs.

Recent judicial decisions have declared that employer contributions to produce promotion programs administered jointly by trustees representing labor and management are outside the scope of exceptions to section 302.

Product promotion programs are not unlawful. Collective bargaining on the subject of product promotion programs is not unlawful. But joint labor-management administration of such programs is unlawful because the courts have ruled that this is a restricted payment to employee representatives prohibited by section 302.

This bill would add two more specific exceptions to section 302—jointly administered product promotion programs and jointly administered committees for the interpretation of collective bargaining agreements—thereby legalizing such jointly administered programs.

At this point in the hearing record, without objection, the text of S. 3149 and departmental reports on the measures as are subsequently provided, will be inserted.

(The material referred to follows:)

90TH CONGRESS
2D SESSION

S. 3149

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1968

Mr. YARBOROUGH (for himself, Mr. BURDICK, Mr. CASE, Mr. CLARK, Mr. HATFIELD, Mr. JAVITS, Mr. KENNEDY of Massachusetts, Mr. KENNEDY of New York, Mr. MCGEE, Mr. METCALF, Mr. MORSE, Mr. MOSS, Mr. NELSON, Mr. PELL, Mr. PROXMIRE, and Mr. WILLIAMS of New Jersey) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend section 302 (c) of the Labor-Management Relations Act, 1947, to permit employer contributions for joint industry promotion of products in certain instances or a joint committee or joint board empowered to interpret provisions of collective-bargaining agreements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 302 (c) of the Labor-Management Relations Act, 1947, is amended by striking out "or (6)" and inserting in lieu thereof "(6)", and by adding immediately before the period at the end thereof the following: "; or (7) with

respect to money or other thing of value paid by any employer of the construction industry to a trust fund established by such representative for the purpose of a joint industry promotional program or a joint committee or joint board empowered to interpret provisions of collective bargaining agreements: *Provided,* That (a) in relation to a joint industry promotional program such payments as are intended to be used for defraying the cost and expenses thereof are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than for product and product application research and development, product and product application market development, promotion of product and product application with architects, engineers, and Government contracting officials, product and product application public relations, publication of product and product application technical information and data: *Provided,* That no labor organization or employer shall be required to bargain on the establishment of any such program, and refusal to do so shall not constitute an unfair labor practice. (b) In relation to a joint committee or joint board empowered to interpret provisions of collective bargaining agreements such payments as are intended to be used for defraying the cost and expenses thereof are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than the interpreting of provisions of collective

bargaining agreements and to resolve and determine issues arising from disputes regarding provisions of a collective bargaining, providing that the finding and/or determinations of such committee or board are binding on all parties concerned: *Provided*, That no labor organization or employer shall be required to bargain on the establishment of any trust fund pursuant to this clause (b), and refusal to do so shall not constitute an unfair labor practice. (c) Such funds shall not be commingled with any other funds or used in any manner to share expenses or otherwise defray the cost of programs that are employer or management functions or labor organization functions, and that the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust fund as well as the requirements of the Welfare and Pension Plans Disclosure Act (except any which the Secretary determines are not applicable to trust funds of the type to which this clause applies)."

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 19, 1968.

Hon. LISTER HILL,
Chairman, Labor and Public Works, U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3149, a bill "to amend Section 302(c) of the Labor-Management Relations Act, 1947, to permit employer contributions for joint industry promotion of products in certain instances or a joint committee or joint board empowered to interpret provisions of collective-bargaining agreements."

In general, Section 302 of the Labor Management Relations Act prohibits all payments by employers to a labor organization or its agents or employees unless such payments are specifically exempted subsequently in that section. S. 3149 would create two new exemptions. It would permit payment by an employer in the construction industry to a trust fund established by an employee representative for the purpose of a joint industry promotional program and to a trust fund established by an employee representative for the purpose of a joint committee or joint board empowered to interpret provisions of collective-bargaining agreements. The bill provides that each trust is to be separate and that the funds cannot be commingled with any other funds or used in any fashion other than specified in the bill. The bill further provides that no labor organization or employer shall be required to bargain on the establishment of either trust fund or program and that refusal to do so shall not constitute an unfair labor practice.

With regard to the trust fund established for the purpose of a joint labor management administered industry promotional program, the bill specifies that the funds can be used only for "product and product application research and development, product and product application market development, promotion of product and product application with architects, engineers, and Government contracting officials, product and product application public relations, publication of product and product application technical information and data." Many of the above activities are similar to those carried on by trade associations or other industry organizations without raising antitrust problems. It is possible, however, that such activities might be more restrictive of competition than necessary or an aspect of an illegal conspiracy and, in the past, trade associations have been involved in antitrust cases. But it is difficult to predict the antitrust consequences of any of the general activities enumerated above without knowing more specific facts. In any event, it is clear that the funding of such a jointly administered industry promotional program through a trust fund established by a labor organization representative pursuant to collective-bargaining would not immunize such activities from the antitrust laws; the antitrust laws would continue to apply as they would in the absence of the trust fund sanctioned by this bill.

S. 3149 would also authorize employer payments to a trust fund to defray the cost and expenses of a joint committee or joint board empowered to interpret provisions of collective bargaining provisions. Such a trust fund would seem to have no antitrust implications, and therefore we have no comment on this aspect of S. 3149.

The Department of Justice has no objection to the enactment of this legislation. However, we believe that the criminal sanctions applicable to Section 302(c) should be supplemented by a provision specifically authorizing the government to bring suit to enjoin violations of the section. There is some question as to whether or not the government can institute civil actions under the current law. Therefore, we recommend that the section be amended to make such authorization explicit.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

Senator YARBOROUGH. Gentlemen, since this hearing was set we have had extended debate in the Senate on the crime control bill. The Senate resumed debate this morning at 9:30. Objection has been made to committees sitting during this debate with three exceptions, but, unfortunately, not this committee hearing.

Manifestly, it will be impossible to do what we planned to do, hold this hearing and complete it in 1 day.

I am going to give all of the witnesses listed this opportunity to be heard. We will not cut you off. We will hear the parties. Under the tightened schedule of the Senate facing two great national conventions in August, it will be incumbent on us to have hearings when we can. But we will proceed with the hearings.

I want to express my regret to the industry representatives who flew in here for this hearing. We didn't know until the last 30 minutes that this Senate was to convene and that objection would be made to our proceeding with this hearing. The hour of convening was to be moved up and unless we are voting, and presumably not voting before 2:30, normally we could continue the hearings.

Of course, any one Senator can object, and on the objection of one Senator, committee hearings cannot be held during the sessions of Senate.

So, objection has been made and some of you, I know, will lose time flying in and will be inconvenienced, but that is one of the perils of the trade and one of the things we can't escape in the Senate.

We will proceed with one witness now. We will hear first this morning, Mr. C. J. Haggerty, president of the building and construction trades department.

I believe you are accompanied by several people. You have your senior counsel and several others.

Mr. Haggerty, will you introduce the panel with you and proceed in your own way.

STATEMENT OF C. J. HAGGERTY, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL–CIO; ACCOMPANIED BY LOUIS SHERMAN AND BRYCE HOLCOMBE, REPRESENTING THE BROTHERHOOD OF PAINTERS, AFL–CIO; JOSEPH POWER, VICE PRESIDENT OF THE PLASTERERS, AFL–CIO; AND JOHN T. JOYCE, TREASURER, BRICKLAYERS, MASONS & PLASTERERS INTERNATIONAL UNION OF AMERICA, AFL–CIO

Mr. HAGGERTY. Thank you very much, Mr. Chairman. I will try to make this statement as brief as possible. I have with me on my right, general counsel for the department, Mr. Louis Sherman, Mr. Bryce Holcombe, representing the Brotherhood of Painters; and on my left is Mr. Joseph Power, vice president of the Plasterers, and John T. Joyce, treasurer of the Bricklayers, Masons & Plasterers International Union of America.

I am pleased to have this opportunity to express once again the support of the building and construction trades department for legislation which would validate in the construction industry, jointly administered funds for the purpose of a joint industry promotional program or joint committee or joint board empowered to interpret provisions of collective-bargaining agreements.

This legislative subject has now had four hearings in the House, in 1962, 1963, 1965, and March of this year. On the basis of these hearings,

the full House Committee on Education and Labor reported the legislation favorably on four separate occasions:

May 1, 1962 (H. Rept. 1719); June 11, 1964 (H. Rept. 1475); May 5, 1965 (H. Rept. 291); and March 28, 1968 (H. Rept. 1219). The current bill in the House, H.R. 15198, is presently pending before the Rules Committee.

Senator YARBOROUGH. Just a moment, Mr. Haggerty. I will instruct counsel to get those four reports and file them with the committee.

Thank you. Will you continue, please?

Mr. HAGGERTY. On August 10, 1965, the House passed H.R. 1153, which is substantially the same as the bill pending before your committee (Cong. Rec. pp. 19,872 to 19,879). Hearings were then held before this committee in October 1966 on H.R. 1153 as it passed the House, but no further action was taken in the Senate.

In view of this substantial legislative history and in order to avoid a further duplication of testimony before this committee, I shall merely recapitulate the major reasons for supporting this legislation.

The industry promotion funds which are the subject of this bill are the products of the collective bargaining process. They are established by management and labor in collective bargaining agreements.

These collectively bargained funds should not be confused with the advertising programs of individual enterprises or indeed of trade associations which are financed by dues of members of the association.

It is the simple thesis of this bill that, if the collective bargaining process is to be used in establishing the fund, then it should be permissible to provide for joint administration of the funds procured by the collective bargaining agreement.

It is important to recall that the need for enactment of the bill arises solely from the nature of the drafting of section 302 of the Taft-Hartley Act, rather than any considerations of public policy.

The subject matter of the contributions covered by this bill was not considered by the Congress which enacted the act. The reason why these contributions are illegal is because of the method chosen by the draftsmen of the act to indicate the legality of certain trust funds.

That method was to enumerate specifically the objects for which joint funds could be established. The consequence of that method of drafting was to make illegal all trust funds which were not specifically enumerated. The unfortunate consequence of the drafting method employed in the formulation of section 302(c) of the act may be seen in the fact that the law as enacted in 1947 made illegal, and the subject of criminal action, trust funds established for the purpose of pooled vacation, holiday, severance, or similar benefits, or defraying costs of apprenticeship or other training programs.

It was not until 1959 that the legislative processes of the Congress produced the amendment which is known as section 302(c)(6) of the act validating trust funds established for these nonobjectionable purposes.

A further such amendment, as embodied in S. 3149, is now necessary to validate the joint administration of industry promotion funds and boards or committees to interpret collective bargaining agreements.

This bill will not authorize the invasion of management prerogatives. It provides specifically that "such funds shall not be commingled with any other funds or used in any manner to share expenses or

otherwise defray the cost of programs that are employer or management functions or labor organization functions * * *."

Although the bill would authorize jointly administered funds to be used to promote products of particular industries in the building and construction trades, it will not accelerate jurisdictional strikes.

For that matter, it should be realized that the provision for joint administration will not affect the basic purpose for the utilization of these funds. Collectively bargained funds which are now unilaterally administered have not had any effect on jurisdictional disputes and the provision for joint administration should not change the current situation.

At present, unilaterally administered promotion funds are the subject of permissive—not mandatory—collective bargaining. (Detroit Resilient Floor Decorators Local 2265 of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO, and Mill Floor Covering, Inc., 136 NLRB 769 (1962).)

The provision for joint administration in the bill will not affect the permissive character of the collective bargaining which prevails at the present time. Indeed the bill is explicit that mandatory bargaining shall not be required for the establishment of an industry promotional program or for the establishment of a jointly administered fund in connection with joint committees or joint boards empowered to interpret provisions of collective bargaining agreements.

It is respectfully submitted for the reasons which have already been given repeatedly that this bill would merely correct a legislative drafting oversight in the original enactment of the Taft-Hartley bill.

There are careful safeguards in this bill with respect to the administration of these joint funds, and it would seem clear that the matter having been thoroughly considered through the various steps of the legislative process, the bill should be enacted at this session of the Congress.

Mr. POWER. Now, Senator, I have a couple of exhibits we would like to submit. I have a statement here from Edward F. Carlough, of the AFL–CIO, in support of S. 3149.

Senator YARBOROUGH. Does the committee have copies of these here?

Mr. POWER. They will be supplied, if allowed, Mr. Chairman.

The other is a letter from Andrew J. Biemiller, director of the Department of Legislation of the AFL–CIO to the Honorable Ralph Yarborough, chairman of this committee.

Mr. HAGGERTY. If additional copies are required we can furnish them. That concludes my statement.

(The material referred to follows:)

PREPARED STATEMENT OF EDWARD F. CARLOUGH, GENERAL PRESIDENT, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL–CIO

The legislative history of Section 302(c) of the Labor Management Act prohibits all payments by employers to employee representatives with certain exceptions, among those exceptions are medical and hospital care, pensions on retirement or death of employees, compensation for injuries, insurance benefits, accident insurance, pooled vacations, and apprenticeship and other training programs. Until 1959 contributions to many of the aforementioned programs were considered to be in violation of Section 302(c) not because of any public policy basis but simply because of the drafting of the statute. In 1959 with the passage of the so-called Landrum-Griffin Act an amendment known as Section 302(c) (6) of the Act, validated trust funds established for trust purposes. Unfortunately

at that time contributions for joint management of industry promotion funds was not included therein.

Industry funds are established through the collective bargaining process of management and labor. Such contributions are in many cases set aside into these funds in lieu of asking for wage increases. In many areas of the Sheet Metal Industry contributions to the industry funds are specifically set aside from the employees and are actually employee contributions. Certainly the promotion of the industry is as important to labor as it is to management. The changing conditions in industry affect to a serious degree the employees opportunities.

For this reason this International Association feels strongly that labor should have an opportunity to join with management in fashioning ways to promote its industry. Therefore, I respectfully urge the Senate Subcommittee on Labor to take similar favorable action on S. 3149, and that it be enacted in this session of Congress.

AMERICAN FEDERATION OF LABOR,
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C. May 20, 1968.

Hon. RALPH YARBOROUGH,
Chairman, Subcommittee on Labor, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMANS In connection with hearings of your Subcommittee on S. 3149, a bill to amend Section 302(c) of the Labor-Management Relations Act, 1947, to permit employer contributions for joint industry promotion of products in certain instances or a joint committee or joint board empowered to interpret provisions of collective bargaining agreements, I wish to express the support of the AFL–CIO for this legislation.

Section 302 now prohibits all payments by employers to union represenatives except payments to certain specified exempted employer-supported funds such as health and welfare funds. This prohibition is aimed at preventing employer bribery, extortion, shakedowns, and other corrupt practices.

Although the restrictive language of Section 302 has been construed as being broad enough to cover joint labor-management industry promotion funds, it is at least questionable whether this result was intended by the Congress. These programs should not be prohibited by law because they have the desirable effect and purpose of expanding business opportunities and employment in the industries where they have been developed.

S. 3149 would specifically exclude from the prohibition contained in Section 302 jointly administered "trade and industry" product promotion programs and trust funds to defray the cost and expenses of joint committees or boards for the interpretation of collection bargaining agreements. The bill would permit, but would not require, collective bargaining between labor organizations and employers on the establishment of such programs or funds. We believe enactment of S. 3149 would be an act of simple justice. Therefore, we urge approval of this bill by your Subcommittee.

Mr. Chairman, I respectfully request that this letter be included in the record of hearings by your Subcommittee on S. 3149. Thank you.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

Senator YARBOROUGH. Senator, are there any questions?

Senator FANNIN. Yes. President Haggerty, in your statement on the second page of your testimony, at the top, "these collectively bargained funds should not be confused with the advertising programs of individual enterprises or indeed of trade associations which are financed by dues of members of the association."

How is it possible to delineate the difference between a product promotion fund and a general industry advancement fund?

Mr. HAGGERTY. The answer, Senator, to your question would be that these funds are by and paid into through a collective bargaining agreement between management and labor to be spent only for that purpose.

Senator FANNIN. The union member pays them?

Mr. HAGGERTY. No, I think the employer would pay, the same as other fringe benefits.

Senator FANNIN. Do you want to correct that statement, then. The employer pays all of the funds?

Mr. HAGGERTY. Yes, and as a result I guess you could probably say that while it is paid by the employer directly to the fund, it is a part of the collective bargaining package—something the employee gives up to the employer so it can be paid into the fund.

Senator FANNIN. Can you give me an illustration of what they give up?

Mr. HAGGERTY. It would be in the wage package.

Senator FANNIN. It is not necessarily true that they give up anything, is it?

Mr. HAGGERTY. Yes, they certainly give it up in wages, I mean why would they have to bargain collectively for it if they are not going to get something or give something.

Senator FANNIN. What I would like you to do is to answer the question on how you can delineate between the difference between a product promotion fund and a general industry advancement fund. I don't think you have answered the question.

Mr. HAGGERTY. I didn't get this last—it is a different question, isn't it?

Senator FANNIN. No, it is the question I asked to begin with. How is it possible to delineate the difference between a product promotion fund and a general industry advancement fund?

Mr. HAGGERTY. One, I think, is a unilateral action by the person who is paying for the product promotion fund, whereas the second part of the question would be something which the employee in collective bargaining makes a sacrifice in the way of wages for the development of their jointly sponsored promotional fund for the mutual benefit of their craft.

Senator FANNIN. The question is, though, how are you going to delineate, who is going to make the decision on delineation?

Mr. HAGGERTY. By agreement.

Senator FANNIN. If the funds are paid in by the employer and the employer wants to use the money in a certain way and the union members that are dealing on this subject with the employer decide it should not be spent in that way, then they could not spend the funds on promotional activities; is that right?

Mr. HAGGERTY. That is what it is for, for promotional activities of a product which is probably handled, developed, and applied by the members of the union who are bargaining with the employer and therefore I think there is a general interest on both sides there.

Senator FANNIN. But what my question is, if the company wants to spend the money in a certain way and the union objects then they cannot spend that money on promotional activities. Althought they have contributed the full amount. They would be in a better position to determine what would promote their products, but they would still be unable to do so.

Mr. HAGGERTY. I am not certain I understand your question.

Senator YARBOROUGH. The cloakroom has just called to say that

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there is objection and all committee hearings not specifically authorized must terminate immediately.

We have orders that any further hearings in the Senate committee are illegal due to a crucial vote that is coming up today on the floor on a crime control bill.

I am sorry to interrupt you, Senator Fannin, and you, Mr. Haggerty. I know you wanted to finish, but this is a matter that neither of us had control over here. We thought we had the 30-minute leeway. We hoped to finish with you and possibly Mr. Donahue, Solicitor for the Department of Labor, who has not been reached.

Again, I want to express my regret to the witnesses who have come in from out of town. If it is uncertain for you, our life is far more uncertain in the Senate. We don't know from one day to another when we will be.

Mr. HAGGERTY. Could you give us some idea of when you will call this again?

Senator YARBOROUGH. No; I have no idea at all. We will have to study the calendar.

We will have to check with the other subcommittees of this committee and do the best we can. We can't give any of the parties, proponents or opponents, any assurance of what day it will be. But we will give all of you reasonable notice, hopefully, that when we start again we will be able to proceed for some hours in the hearing.

Thank you, again, for your patience and understanding of the Senate rules which preclude us from meeting any further this morning.

Thank you.

(The supplemental statement of Mr. Haggerty follows:)

SUPPLEMENTAL STATEMENT OF C. J. HAGGERTY, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL–CIO

This statement, for inclusion in the hearing record, is intended to supplement my testimony of May 21, 1968, on S. 3149 and to respond to objections to that Bill interposed by several witnesses representing contractor associations on July 15, 1968.

The objections raised by the aforementioned witnesses are simply repetitive of those raised in the past and rejected in the other body of Congress (which passed essentially the same bill in August, 1965) and can be boiled down to a single, startling assertion: That the collective bargaining process should be foreclosed to contractors and labor organizations who voluntarily wish to cooperate in the operation of two types of otherwise lawful, non-objectionable programs of mutual concern and interest. One of these programs—the settlement of disputes involving the interpretation of collective bargaining agreements—obviously requires the participation and, ideally, the cooperation and internal regulation of both parties. And, the fact that thousands of existing industry promotion programs have been created through the collective bargaining process indicates that management has recognized the proper interest on the part of labor's representatives in product promotion programs. Indeed, Robert B. Wood, representing the Sheet Metal and Air Conditioning Contractors' National Association, conceded in his testimony that in his industry in the Pittsburgh area, union cooperation with industry promotion "works well" (stenographic transcript for July 15, 1968 (hereinafter referreed to as "Tr."), pp. 37, 51–2). But, apart from the validity of the views of those employers who refuse to recognize the unions' interest in product promotion programs in their industries, there is absolutely no justification for a proscription—indeed a criminally enforceable proscription—against those employers who believe otherwise and favor this Bill. As the Committee knows, the national employer representatives of several construction industries favor this bill and have, for many years, urged its passage.

Several of these witnesses repeatedly urged the defeat of S. 3149 on the ground that employers currently engaged by both product promotion and contract-dis-

pute settlement programs, either on a unilateral basis with their own funds or on a cooperative basis with labor paying its share of the costs, would now be required to incur the total cost of jointly administered programs. This assertion is completely inaccurate as well as grossly misleading. To begin with, S. 3149 does not require employers to change their current unilateral or cooperative programs in any way nor prohibit their expansion in the future if they so choose. The Bill simply legalizes jointly administered programs for those who may wish to adopt or experiment with such. As I emphasized in my previous testimony, the bill explicitly provides that the matter of jointly administered programs is not even a mandatory subject of collective bargaining, and employers, therefore, need not even consent to considering such matter. Secondly, S. 3149 has no bearing on the funding arrangements for jointly administered programs. It would be completely up to the parties to decide upon the portion of the expense which each would bear just as it is currently up to them with respect to non-jointly administered but cooperative programs. Indeed, the painting industry, which is one of those supporting the Bill, has already evolved plans (whose implementation awaits the passage of this legislation) for the establishment of a national trust fund to be used for industry promotion. Under this plan, the national contractors' association's initial contribution of $5,000 will be matched by an identical contribution from the International Union.

The painting industry's pending plan also helps to illustrate the possible benefit resulting from jointly-administered product programs. It is that industry's belief that a large scale, continuous, many-faceted communications program is urgently needed to acquaint both the general homeowning public and painting employees with the serious health and safety hazards of certain types of poisonous paint on the market and often used by homeowners and nonprofessional, "fly-by-night" contractors. The industry believes that the jointly-supported employment of outside talent to administer such a program on a full-time, executive basis would make such a program feasible and successful.

The inaccuracy of the allegation that, under the Bill, employers will have to "foot the entire cost" for jointly administered programs to settle contract disputes at once eliminates the contention that lack of financial contribution will cause unions to raise frivolous disputes. But, the more general assertion that such programs will mutliply the number of management-labor disputes is patently absurd. The increased cooperation and coordination which joint administration is intended to achieve could serve only to reduce those disputes, further improve relations between management and labor and increase industrial peace. But, we repeat—S. 3149 does not require the adoption of jointly administered programs. Employers and unions are both anxious to minimize contract disputes, and if either feels that such a minimization could best be achieved by non-jointly administered programs, the Bill leaves it to their free choice to act accordingly.

Recognizing the fact that the Bill in terms makes collective bargaining for the establishment of jointly administered programs strictly a voluntary matter, several of the objecting witnesses claim, notwithstanding, that the practical realities in the construction industry would result in employers being forced to bargain at the whim of unions. More specifically, one witness even states that unions would inflate their demands on mandatory subjects and then indicate a willingness to relax its position if a concession is made on the permissive subject (Tr. 84). Another claims that construction employees earn excessive wages—he mentions a figure of $20,000 (Tr. 65)—and that this fact is the result of currently existing industry promotion funds negotiated in collective bargaining (Tr. 34). These specific claims can be disposed of in short shrift. Unions are already prohibited by Section 8(b)(3) of the National Labor Relations Act from making the disposition of mandatory subjects of collective bargaining contingent upon employer responses to permissive subjects. Insofar as the nature and effect of wage settlements in the industry are concerned, the figures stated are completely erroneous; indeed, when the eroding effects of seasonal employment are taken into account, average gross earnings in the construction industry are $7,016 (according to the last Commerce Department report—*Survey of Current Business*) which is lower than in four of the other 11 major industrial categories.

In any event, it is hard to perceive the relevancy to S. 3149 of wage settlements alleged to result from the very unilaterally-administered employer promotion programs which are already in existence and in no way involved in this Bill and whose preservation is so urgently sought in other parts of the same witnesses' testimony. But those witnesses' arguments on this point contain a more basic flaw, rooted in a fundamental misconception of the collective bar-

gaining policy as expressed in our labor statutes. Based on their belief—mistaken in my opinion and in the opinion of contractors supporting this legislation—that the pendulum of economic power in the construction industry has swung too far to the side of labor, they would have the Congress place (or in this case retain) an all-inclusive ban on any jointly administered financial effort concerning subjects which they themselves necessarily concede to be a proper subject of collective bargaining. Such an approach is a major departure from the approach in our labor relations of thirty years standing, which is to isolate and proscribe any specific practices, procedures and objectives which may be shown by evidence to have been abused by either management, labor or both. It may be added that S. 3149 contains specific provisions to protect against misuse of joint funds including the use of such funds to defray the cost of labor organization functions.

The claim that jointly administered industry promotion programs would increase jurisdictional disputes is no less frivolous or irrelevant to the issues involved in the Bill. There is no actual evidence of any connection between industry promotion and jurisdictional disputes. Moreover, the Building and Construction Trades Department is concerned about the welfare of all building tradesmen and strongly desires to keep jurisdictional disputes in the industry to a minimum. This is evidenced by the currently-existing National Joint Board for the Settlement of Jurisdictional Disputes which was established in 1948 by agreement between the Department and the Participating Specialty Contractors of America as a means of effectuating a major Congressional purpose underlying Section 10(k) of the Labor Act—the voluntary, private adjustment of jurisdictional disputes. More recently, guidelines for the negotiation of local contracts in the rehabilitation and construction of residential housing under the federally-assisted "Model Cities" program have just been adopted by the Presidents of the 18 International Unions making up the Building and Construction Trades Department. These guidelines state that local contracts "should provide specifically that there will be no work stoppage of jurisdictional disputes" (*Daily Labor Report*, No. 139 (July 17, 1968), p. A–8 (Bureau of National Affairs, Inc.)). These examples, indicating the Department's responsibility and leadership in seeking to eliminate jurisdictional disputes, indicate that the Department's support for S. 3149 is necessarily based on its firm belief that the Bill, which merely authorizes joint administration, will have absolutely no tendency to increase jurisdictional disputes or work stoppages resulting therefrom.

I would like to respond to those of the witnesses who attack S. 3149 as "special interest" legislation applicable only to the construction industry. This is not our doing or the doing of any of the Bill's sponsors, and we certainly believe that jointly administered promotion programs should be allowed to operate in all industries. We would remind the Committee that, originally, the legislation to legalize such programs was, in fact, not limited to the construction industry, but that certain members of Congress secured such a limitation. It seems particularly inappropriate for opponents of the legislation now to criticize it on the basis of this limitation.

Nine years ago, the Congress amended Section 302 to remove the proscription against voluntary, jointly administered apprenticeship training programs. The same objections made by the witnesses to S. 3149 are equally applicable to those programs. Those objections have proved groundless, and today the country's hope for supplying, on an equal opportunity basis, the great demand for construction workers rests in no small part on those programs. Those who would prohibit the voluntary joint management-labor administration of other important industrial programs have great social impact, such as the ones involved in S. 3149, apparently view management and labor as irrevocably warring factions. There is no justification for, and considerable danger in, this philosophy in today's America when management and labor must join together to conquer the overwhelming social problems which we face. We cannot afford to reject the premise upon which S. 3149 is based: that the collective bargaining process should be allowed to play a part in the search for solutions to those problems.

In closing, the Building and Construction Trades Department, AFL–CIO, reaffirms its strong support for S. 3149 and urges the Committee and the Senate to approve this long-delayed legislation without further delay.

(Whereupon, the subcommittee adjourned at 9:55 a.m., to reconvene at the call of the Chair.)

TO ALLOW JOINT INDUSTRY PROMOTION FUNDS

MONDAY, JULY 15, 1968

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 9:15 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Ralph W. Yarborough (chairman of the subcommittee) presiding.

Present: Senators Yarborough (presiding) and Fannin.

Committee staff members present: Stewart E. McClure, chief clerk; Robert O. Harris, counsel to the subcommittee; and Eugene Mittelman, minority counsel.

Senator YARBOROUGH. The Subcommittee on Labor will come to order and hearings will be resumed on S. 3149, a bill to amend section 302(c) of the Labor-Management Relations Act of 1947, to permit the employer contributions for joint industry promotion of products in certain instances, et cetera.

The first witness this morning is the Honorable Charles Donahue, solicitor for the Department of Labor.

STATEMENT OF CHARLES DONAHUE, SOLICITOR, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY ALAN BUTCHMAN, OFFICE OF THE SOLICITOR

Mr. DONAHUE. Thank you, Mr. Chairman. I certainly will try to be as brief as possible, starting by submitting my statement to the reporter.

Senator YARBOROUGH. Thank you. We will ask that of everyone. If I have to, I will have evening sessions to finish up hearings on this, and give an opportunity to the committee to vote on it.

Mr. DONAHUE. I wish to introduce for the record, Mr. Alan Butchman, my associate, and I wish to commend the subcommittee for having introduced S. 3149.

This is a bill which, as it states in its heading, has the purpose of permitting employer contributions to the joint labor-management-industry promotion of products in certain limited instances, and also would permit funds jointly managed for the purpose of establishing joint committees and financing them, for the added purpose of interpreting the provisions of collective-bargaining agreements.

These objectives and this bill are favored by the Department of Labor. It is to us just another example of very real limitations which are imposed by section 302.

I think the chairman will remember my appearance last February concerning S. 2704, which would provide for joint funds for scholarships and day care, two other very useful purposes.

At that time, we stated what we considered to be the limitations upon section 302, and the need for broadening it to include other worthwhile purposes.

This is a bill which has been long considered by the Congress. It was reported four times in the House of Representatives. It passed the House once in 1965. It is now awaiting action in the House of Representatives, a rule having been granted by the House Rules Committee. Hearings have been held several times here in the Senate, but I assume that no other action has been taken, awaiting whatever turns out to be favorable action by the House of Representatives.

These funds which this bill would permit are, in my opinion, very useful in their operation. First of all, the case which raised the question as to the legality of these funds under section 302 involved the Operating Plasterers Local Union No. 2 and Paramount Co., Inc., a case arising in the Ninth Circuit, involving funds with which I have had some personal acquaintance and experience over the years. They were exemplary in character, and had the laudable purpose, and the limited purpose, of insuring that plastering products and methods were used in construction to the extent that they were found feasible by those who were doing the building, by architects and engineers and by contractors and craftsmen in the industry.

This fund was lauded by the Court, as a matter of fact, in the course of declaring that section 302 would not permit this type of contribution because it was a contribution to a representative of employees within the meaning of the statute.

The Court, however, went out of its way to express its opinion that the fund in question was a fine fund for a high purpose, but it said unfortunately that "You should go to Congress with this question. Don't come to us, trying to prove that this fund is not prohibited by the statute," because the Court believed that it was.

This bill will correct that defect, along the lines that the Court pointed out, namely, that the Congress, not the Court should be asked to act by the party, defendant in the case. Now comes the opportunity for the Senate to follow what I believe will be favorable House action on the bill and give it every consideration which it deserves.

Senator YARBOROUGH. Thank you very much, Mr. Donahue. I have noted your concluding paragraph. You recommended favorable action on this bill, with one caveat, that the legislative history cleraly show that the provisos of the new section which relieve parties of the duty to bargain and spell out that that leaves the parties free to bargaining only for this type of fund, and not for other purposes.

We will keep that in mind in drafting the bill.

Thank you very much.

Mr. DONAHUE. I appreciate that very much.

(The prepared statement follows:)

PREPARED STATEMENT OF CHARLES DONAHUE, SOLICITOR, U.S. DEPARTMENT OF LABOR

Mr. Chairman and Members of the Subcommittee; I appreciate this opportunity to appear before you in support of S. 3149, a bill to amend section 302(c) of the Labor-Management Relations Act.

S. 3149 has two principal objectives.

—It authorizes employers in the construction industry to contribute to jointly administered industry promotion programs. The sole purpose of such payments would be to defray the expenses of research and development relating to products and their application, the development of markets, the promotion of products, public relations, and publication of related technical information and data.

—It permits construction industry employers to contribute to joint committees or boards empowered to make definitive and binding interpretations of collective bargaining agreements.

Employers are not now prohibited from engaging by themselves in the industry promotional activities which I have referred to. Indeed, some collective bargaining agreements already provide for industry advancement funds financed by the employer. What is prohibited are employer contributions to programs administered jointly with labor representatives. Similar prohibitions exist with regard to joint committees and boards to interpret collective bargaining agreements.

These prohibitions arise out of section 302 of the Labor-Management Relations Act. The basic purpose of that section is to eliminate the possibility of certain corrupt practices and to protect the interests of beneficiaries of lawful employer-supported funds.

Section 302 was enacted essentially on an experimental basis. It was developed at a time when comparatively little information was available on the precise types of funds existing. As a result, Congress placed in the law standards which 20 years later appear to be unduly rigid and narrow.

I believe that there are today a number of different kinds of funds—prohibited by section 302—with valid and legitimate purposes, and in my opinion, contributions to these funds should be permitted.

Contributions to industry promotion funds and to joint boards to resolve collective bargaining disputes are in this category. As the Ninth Circuit Court of Appeals observed in *Cement Masons* v. *Paramount Plastering* (310 F. 2d 179):

We do not quarrel in the slightest with the laudable objectives of the trust amicably created by labor and management in this case. We sympathize with the efforts of both labor and management to solve a vexing industry problem. But like so many of such present-day problems, our duty is to rule in accordance with that which the Congress in its wisdom has seen fit to enact. We cannot widen the door when the door has been carefully tailored by the representatives in Congress. The relief sought by the appellants herein must be found in congressional and not judicial action.

I would stress that S. 3149 contains numerous safeguards. It provides that contributions must be made to separate funds established to carry out the specifically authorized purposes and that no assets held by such funds may be used for any other purpose or commingled with other funds. They may not be used to defray the cost of programs that are employer or labor organization functions.

Provisions of section 302(c)(5)(B) of the Labor-Management Relations Act would also apply.

In closing, Mr. Chairman, and members of the Subcommittee, I recommend favorable action on S. 3149. I do suggest, however, that the legislative history of the bill indicate clearly that the provisos to the new section which relieve the parties of a duty to bargain apply only to bargaining over payments to the specific types of trusts referred to and do not affect the duty to bargain in other areas.

Senator YARBOROUGH. The next witness is Mr. John Buster, a painting contractor for the Painting and Decorating Contractors of America.

STATEMENT OF JOHN K. BUSTER, MEMBER, AND REPRESENTING THE PAINTING AND DECORATING CONTRACTORS OF AMERICA

Mr. BUSTER. I am John K. Buster, president of Leonardo Decorators, Inc., and operate a general paint contracting business in the District of Columbia area. I am here today as a member of and representing the Painting and Decorating Contractors of America, a national trade association of some 7,000 members from every section of this Nation.

As an association of contractors, we are most appreciative of this opportunity to testify in support of S. 3149 and warmly thank you, Mr. Chairman, and those others joining with you in sponsoring this needed legislation.

This legislation is no stranger to this committee as we testified at hearings on a similar bill during the previous session. To discuss the provisions of S. 3149 would only be repetitious and be an infringement of your valuable time. Our comments will be directed solely to the critical need and reasons for enactment of S. 3149 during this session of the Congress.

Section 302(c) of the Labor-Management Act of 1947 was enacted to curtail bribery, fraud, extortion, and corrupt practices in labor-management relations. These provisions were most laudable, but Congress later determined them to be too all-inclusive and beyond any intent of its sponsors. Consequently, exceptions were made for health and welfare, pension, vocation, and apprentice training programs, with safeguarding provisions such as the Welfare and Pension Plans Disclosure Act.

Now courts are ruling that employer contributions to any jointly administered committees, unless specifically exempted, are illegal. In making these decisions, the courts have had no quarrel with the laudable objectives of these trusts amicably created by labor and management to solve industry problems. In fact, these same courts have sympathized with these efforts, but have said relief can only be obtained in congressional action rather than judicial opinion. The very wording of section 302(c) has tied their hands.

Enactment of S. 3149 would release these bonds by giving exemption to two other type jointly administered and employer-financed trusts; industry advancement or promotion programs and committees established to resolve disputes arising from existing collective-bargaining agreements.

We have no quarrel with these court decisions. We accept their reasoning, but we cannot accept any inference that any Congress, in its great wisdom ever intended to interfere with the inalienable right of labor and management to negotiate and develop programs which are to their mutual advantage. That management is willing to contribute to the furtherance of these programs, when properly controlled and with sufficient safeguards should not make them illegal. The courts have said they were laudable objectives (Ninth Circuit Court of Appeals, 310 F. 2d 179).

When this type legislation was introduced, opponents complained that this subject became a mandatory subject of collective bargaining. Under the terms of S. 3149, this objection has been removed. Now we hear an objection that enactment would be an "encroachment of management prerogatives."

In introducing S. 3149, your chairman aptly termed this no more than a shibboleth. Is there any sound reasoning to utilize the collective-bargaining agreement to obtain a "management prerogative" and then claim it is solely a management function? The painting industry, for 35 years, has not believed this.

Through joint committees or joint boards made up equally of labor and management, and financed by employer contributions, this industry has established an enviable record of labor peace during the term of an existing labor agreement.

This record of performance has been made and during all of this time no finger of suspicion has ever been pointed toward its function or management. Prompt settlement of disputes and avoidance of work stoppages are a joint labor-management prerogative and, where mutually agreeable and acting strictly under the law, employers' willingness to defray the expenses of such tribunals should be permitted.

This is also our opinion on industry advancement or promotion funds. The most successful such program in the painting industry is in Cleveland, Ohio, where both the employer and employee contribute 2 cents per hour toward a fund to promote the industry and to provide more hours of gainful employment. Surely this should not be regarded as an illegal act.

The Painting and Decorating Contractors of America urge this committee to check into the successful history of such type committees and make it possible for the painting industry to meet the needs of the industry, both in the field of industry promotion and dispute settlement procedure.

Your consideration is greatly appreciated and we pray for the favorable action of this subcommittee.

Thank you, one and all.

Senator YARBOROUGH. Your position there, Mr. Buster, is that the law passed to prevent corrupt practices in the dealings of management and the leaders of labor is actually so restrictive it prevents amicable and honorable dealings between management and labor.

Mr. BUSTER. Yes.

Senator YARBOROUGH. The next witness is John E. Healy, speaking for the Associated General Contractors.

STATEMENT OF JOHN E. HEALY II, WILMINGTON, DEL., REPRESENTING THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. HEALY. My name is John E. Healy II. I am president of John E. Healy & Sons, Inc., general contractors of Wilmington, Del. I have represented the general contractors of our industry on the National Joint Board for the Settlement of Jurisdictional Disputes for almost 3 years. I am cochairman of the AGC–AIA Documents Review Committee nationally, and serve on the Labor Committee and the Industry Advancement Fund Committee of the National AGC. In addition, I am vice chairman and trustee of the industry advancement program of the General Building Contractors of Delaware.

I am appearing before your subcommittee as a representative of the Associated General Contractors of America and I am here to register our opposition to Senate bill 3149.

We believe that joint union control over promotion funds is not in the public interest, and that the passage of this bill, or any similar bill, poses dangers to management's basic rights to manage, which rights incidentally must be firmly reestablished if we are to survive as an industry or, indeed, as a capitalist state.

While we are opposed to any legislation of this type, may we point out two specific flaws in this particular bill before discussing our general opposition. The bill undertakes to limit its coverage to joint funds for product promotion. The language in this bill is certainly

too uncertain to have any significance and while it purports to have a narrow coverage, it could be mistakenly claimed to legalize joint funds of a general nature, such as the industry advancement program which we have in Delaware, and many other places.

These advancement programs cover activities aimed to the improvement of management efficiency, training personnel, construction markets, developing new construction methods and techniques, safety programs, manpower programs, construction education and publicizing services of contractors and other activities for the good of the industry. These advancement funds in most cases have provisions included in labor agreements indicating the amount of the contractor's contribution per man-hour to the fund, and in fact are general in nature, aiming at the promotion of the industry, rather than the promotion of a particular product, and they are administered solely by management.

Concerning S. 3149, it has been pointed out before the word "product" could be misinterpreted as encompassing an entire construction project. We are also opposed to legalizing joint control of funds for handling grievances. We would hope that this entire provision on handling grievances be omitted from any legislation reported out, if, in fact, any is reported out.

Mandatory bargaining: While we make these particular points, we do not want our association to be misunderstood as in any way supporting this bill, or any similar bill. Let me mention the reasons for our general opposition to such legislation.

It is our opinion that such legislation as S. 3149 would make joint funds, in fact, a mandatory subject of bargaining. We have studied the language in the bill, but this is not adequate protection.

Assuming that this provision on permissive bargaining is in the bill if passed, the experience of our association with collective bargaining in the construction industry leads us to believe that the economic forces of organized labor would still be exerted to establish these funds. In collective bargaining, indirect economic forces are easily applied on behalf of nonmandatory subjects of bargaining by offering relief from inflated demands of a mandatory-bargaining nature.

So it is our view that once joint funds are legalized for product promotion purposes, they may well appear on construction bargaining tables across the country along with demands of a mandatory nature and it would seem very unlikely that any saving amendments of the type in this bill would have much effect in eliminating this danger.

Is there any question concerning the evils that would flow should joint funds become mandatory subjects of bargaining, in fact, if not in law? We assume there is no disagreement on the evils of making them mandatory subjects of bargaining since supporters of the bill have included language they hope will prevent it from happening.

Jurisdictional disputes: Now, gentlemen, let's consider for a moment the matter of jurisdictional disputes in connection with this proposed legislation. These disputes, confined mostly to the construction industry since this is the area in which some 18 craft unions operate, are not only occurring at a frequency that has become a national disgrace, but are now a national crisis.

If you could sit where I sit every Tuesday morning—at the AFL–CIO Building on 16th Street as a member of the National Joint Board for the Settlement of Jurisdictional Disputes, and watch the parade of

work stoppages—walkoffs, picket lines and the like, in many cases over unbelievably minor items and in contravention of a national plan for the settlement of such disputes without work stoppages or delays, you would be shocked as I am. You would be shocked all the more when you learned the astronomical cost of these disputes to our economy, our taxpayers, business firms, and the workers themselves.

These disputes in many cases are embarrassing to the international leadership of the unions. They well know the cost and senseless disruption that these disputes cause and would like to control them on a local level. However, they tell me that the Landrum-Griffin Act took away from the international unions some of the control they formerly exercised over local unions. If the building trades department were here today seeking to recover the measure of control over locals which they feel they have lost, I could understand this. I cannot understand their pushing this legislation which in their hearts they know is not their cup of tea and which contains the latent ability to cause them additional problems with their local unions.

We believe the legislation would stimulate the building trades unions to use joint funds to fight their jurisdictional battles against one another. Previous testimony on promotion-fund legislation makes it clear the building trades' interest in the promotion of a product is based, in the last analysis, on their interest in preserving their traditional work jurisdiction, and winning new areas for their respective memberships.

But even more embarrassing, perhaps, would be the kind of interunion battles that could result. There is the possibility of promoting handcrafted products as against factory-made products. This legislation permits the building trades unions to obtain and use joint funds for promotion of competing products.

If they are against fabricated products, they would, in effect, be cutting down on work performed by members of nonconstruction unions. But these other unions would not be allowed to have joint funds to fight back with, as S. 3149 only authorizes the use of joint funds by the construction trades unions.

Costs: There is another aspect to this legislation which deserves the most careful consideration of every Member of this Congress, and that is, what effect will this legislation have on construction costs? You gentlemen are very properly concerned with the skyrocketing costs of Government programs, such as model cities, urban redevelopment, housing, highways, air and water resource programs, sewage disposal programs, antipoverty programs, you name it, and you have the construction industry involved. Wherever you turn we are facing you.

Therefore, you should consider well what you are doing to the construction industry with legislation such as S. 3149.

There is no doubt our costs will increase. There will be an immediate demand on the part of local unions to negotiate these funds as a matter of prestige. There will be no increase in production or decreased costs because of these funds. Simply increased costs which in our economy must be reflected in increased prices.

No need for the bill:

We sincerely fear many dangers from this bill, and I assure you, our fears are based on a half century of association experience on the part of AGC in construction work and in labor negotiations. It

is our feeling that this legislation is not needed, and in fact, is against the public interest.

The construction unions have the power to veto the creation of any promotion fund by simply refusing to have it included in the labor agreement. They also have the power to kill a promotion fund by refusing to continue it in the labor agreement during the next negotiations. Is that, actually, a weak position—to have the power of life and death over a promotion fund? Certainly, the bill cannot honestly be concerned with any question of union power. Then, what is its purpose?

The purpose of this bill is to give the unions joint control over the funds. That is its purpose, and nothing more. And in our opinion, the bill cannot be justified.

While we recognize the abilities and sincerity of purpose of the leadership of the international unions, we also recognize their apparent inability to control strong-willed locals, therefore this legislation will lead to additional labor turmoil, which is exactly what we cannot afford.

Conclusion:

We oppose S. 3149 because we believe it would make union demands for joint promotion funds mandatory subjects of bargaining, in fact if not in law; and because we believe such legislation would contribute to jurisdictional disputes and added costs. And while we see grave threats posed by this bill, we cannot see any need for the bill, as far as the public interest is concerned.

We would urge its defeat.

I thank you.

Senator YARBOROUGH. You have a very forceful statement. I want to assure you in looking at this list, that the 16 Senators, a sixth of the Senate, who cosponsored this bill, including Members of the Senate of both parties and including those who have had the most experience in labor matters, management-labor matters, such as Senators Wayne Morse and Jacob Javits of New York—looking over the list, I assure you that I feel there is not a man of these 16 cosponsors who had any idea of passing a bill that wouldn't result in alleviation of disputes.

It is the object of the bill to make this permissive, not mandatory. I understand from your statement that it might be broadening to a mandatory demand, while the law provides it would be permissive. I can understand from the standpoint of the general contractors how frustrating it must be to have a jurisdictional dispute not relating to your own relations to the men working for you, but between members of unions.

Probably if it relates to the use of materials, buttressed by the subcontractors who employ those men and who see members of unions, some new method of construction might put them out of business, and the subcontractor out of business, too.

It is true of practically every law that we pass up here that people fear dire consequences from it. Some of the laws don't pan out well, and they are repealed, or modified or amended, but most of the time the worst fears don't develop in the realities of life, and if this legislation passes, I certainly hope it doesn't, for you and the general contractors.

I would like to explore that further with you, but our time is running on, just as you think this bill might cut you off.

Yours is a prospect in the distant future. You have made a forceful statement, and you have put your position clearly before us.

The witnesses are representatives for the National Constructors Association, Mr. Graney, of New York, and Mr. Collins, of Bloomfield, N.J.

STATEMENT OF J. M. GRANEY, LABOR RELATIONS MANAGER, EBASCO SERVICES, INC., OF NEW YORK, AND PAST PRESIDENT, NATIONAL CONSTRUCTORS ASSOCIATION; ACCOMPANIED BY GEORGE R. COLLINS, VICE PRESIDENT, LUMBUS CO., AND PRESIDENT, NATIONAL CONSTRUCTORS ASSOCIATION

Mr. GRANEY. In the interest of economy of time, I will give our statement to the reporter and paraphrase it.

(The prepared statement of Mr. Graney follows:)

PREPARED STATEMENT OF J. M. GRANEY, LABOR RELATIONS MANAGER, EBASCO SERVICES, INC., NEW YORK, AND PAST PRESIDENT, NATIONAL CONSTRUCTORS ASSOCIATION

My name is J. M. Graney. I am labor relations manager for Ebasco Services Incorporated of New York and immediate past president of the National Constructors Association.

I appreciate this opportunity to appear on behalf of that Association to indicate why our Association is opposed to S. 3149.

The National Constructors Association, known as NCA, consists of 32 nationally and internationally known United States firms of engineers and builders engaged in the design and construction of large-scale industrial facilities throughout the United States and abroad. NCA companies are responsible for most of the industrial expansion in the United States. They engineer and construct multimillion dollar complexes particularly in the fields of oil refining, steel, power generation and chemicals. Their total annual volume of work at home and abroad amounts to some $6 billion. As a matter of company and Association policy, all members of NCA perform field construction work under collective bargaining agreements with the building and construction trades unions affiliated with the AFL–CIO. An informational folder about NCA is attached.

Our Association is opposed to S. 3149 for a number of reasons. The most serious and urgent reason why joint labor-management industry funds should not be legalized has to do with the runaway escalation of wages in the construction industry. We believe that wage escalation in our industry, already one of the most serious problems facing the national economy, has been caused, in part, during the recent past by industry promotion funds. We believe further that any legislation legalizing joint administration of such funds would add to the inflationary pressures already existing.

Without specific identification, let me suggest a typical case by way of illustration. It involves a city in which there has been a long-established collective bargaining relaitonship between a local building trades union and a local contractor association. For years these two have operated under a written agreement spelling out wages and working conditions, an agreement which has been periodically negotiated or renegotiated to reflect changing economic conditions.

A few years ago the contractors persuaded the union to incorporate a clause creating an industry promotion fund. It would be financed by payment of a specific amount, in terms of cents per hour, for each manhour worked. The fund soon became a financial success. Not only did members of the contractors association contribute, but also contractors who were not members. The association ssoon reduced its annual dues, formerly the sole means of funding its operations, and then eliminated them altogether. If a contractor, either a member or a non-member, failed to contribute to the industry fund, the local union would undertake coercive or harassing measures to insure payment, acting, in effect, as a collection or enforcement agency.

Last year the local agreement expired and was up for renegotiation. The union presented wage increase demands which, by any objective standard, were

outrageously high. In any ordinary situation, the employers would have rejected these demands and would have held to this position through a long strike if necessary.

In this case, however, the employers meekly accepted the demands. Without a strike of even a day, they signed on the dotted line.

Why? Because the union coupled their wage demands with a simple declaration. Unless the wage demands were met, the union would refuse to negotiate a continuance of the industry fund. Against this declaration, the employers had no defense. Because industry funds are a nonmandatory subject for collective barganing, either party could kill such a fund merely by refusing to talk about it at the bargaining table.

Without a clause in the agreement continuing the fund, union enforcement of collections would cease and the fund would die. Expiring with it would be the employer association's financial structure.

Here, then, is a typical situation in which an industry promotion fund subverts the collective bargaining process. I am informed and I believe that precisely this situation occurred last year in a large midwestern city. The wage increase of $2.35 per hour for a three-year contract was the highest by far of any granted up to that time in the 1967 round of construction wage negotiations. It set an inflationary pattern that spread through the state and beyond. It was one of the reasons why 1967 has been described as the most inflationary year in the industry in at least a decade.

Industry promotion funds, starting from small beginnings, have been increasing in number in recent years. Passage of S. 3149 would have the effect not only of converting the present management-operated funds into systems which are directed jointly by labor and management, but it would also cause many more funds to me set up.

Some may say that the subversive tactics I have mentioned would be less likely to occur under jointly-operated funds because labor unions would be unwilling to scuttle or threaten to scuttle what they help to operate. Such an argument has little validity. Wage increases are the No. 1 priority item on any list of contract demands a union presents at the bargaining table. No intelligent union leader would or could waive or reduce wage demands in exchange for anything so indirectly tied to the economic welfare of his members as an industry promotion fund.

Although the corrosive influence which industry funds have on collective bargaining in the construction industry is our major reason for opposing these funds and opposing legislation encouraging their growth, other valid reasons exist for our opposition to S. 3149.

These reasons include:

1. Industry Promotion Funds would add to the cost of work performed by contractors operating on a national scale without providing anything of value to the employee, contractor or the public.

2. S. 3149, by seeking to legislate for only one industry, i.e., construction, should not be attached as a specialized appendage to the basic statute covering the broad range of labor-management relations in virtually all industries affecting interstate commerce.

3. The funds would erode the present contractor-labor union relationship by permitting labor unions a voice in an area which is properly a management function. It would have the effect of encouraging as well as permitting the intrusion by labor unions into areas which do not involve direct benefits to employees they represent.

With respect to the first point, the bill would add to the cost resulting from the management-operated funds already in existence by stimulating the creation of many new funds. The bill, by giving labor unions a role in the administration of these funds, would give local unions a strong incentive for agreeing to the fund program and incorporating provisions for it in local collective bargaining agreements.

Local unions also would have more reason to see that all contractors make the stipulated contributions to these funds. Many employers, including national contractors and others not signatory to a local agreement are now subjected to coercion and harassment from the union if they fail to make these contributions. These improper union tactics would increase if the funds were jointly administered.

NCA members are unique in that they normally employ virtually all crafts on a direct-hire basis, without subcontracting. Thus, they would be expected to contribute to a larger number of individual craft funds than other contractors.

Experience has shown that industry funds are used in many instances to de-

fray the operating expenses of local employer associations, thus enabling these associations to reduce or completely abolish dues usually assessed local contractor members for this purpose. In addition, many associations have greatly increased their staffs and enlarged their offices because the large income from contributions enable them to do so. Some of these funds come from coerced contributions of National Constructors Association members who find themselves in the position not only of paying dues for their own national association, but also of helping to pay for the operation of local associations without receiving any service in return.

Industry promotion fund contributions therefore acquire the character of a private tax which any contractor going into the local area covered by a fund is expected to pay. The payments must, of course, be passed on to the customer or buyer of construction services in the form of higher costs.

The federal government becomes a major if indirect payer of this private tax. The Atomic Energy Commission's $375 million dollar facility at Weston, Illinois provides an illuminating example. It has been calculated that if industry promotion funds requiring payments of five cents per manhour should be in effect in this locality at the time of construction, they would add $1.2 million dollars in costs to the taxpayers.

This would appear to be a high price to pay to enable certain crafts and certain contractors who employ them to promote particular products.

In conclusion, it should be pointed out that demands upon members of the National Constructors Association for contributions into local industry promotion funds are manifestly unfair and unreasonable.

These companies, as engineer-designers as well as contractors, would be forced often to contribute to funds promoting competing products, including products which the NCA member, in its professional engineering capacity, may have refused to specify for the project.

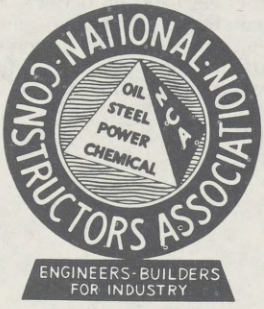
The National Constructors Association believes that industry promotion funds are harmful to the construction industry and cause unreasonable and unnecessary increases in cost to construction clients, including the Government. Because S. 3149 will cause the number of these funds to mushroom, extending to all sectors of the industry, we urge that this bill be not enacted into law.

J. M. GRANEY.

NATIONAL CONSTRUCTORS ASSOCIATION

1968

ANNUAL DIRECTORY



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NCA
Serving Industrial Growth

The National Constructors Association this year begins its third decade of group effort devoted to improving the services offered by its member companies at home and abroad.

The Association, composed of 32 internationally known engineering and construction contractors engaged primarily in designing and building chemical plants, steel mills, power generating facilities and oil refineries, carries out concerted programs to improve and stabilize field labor relations. Acting through national and regional labor committees, it has made significant contributions in this field which have been recognized by industry, government and labor organizations.

NCA's Labor Committee is composed of representatives of all member companies. It has pioneered in developing and maintaining national agreements with major building trades unions. Eight years ago, it joined with the Building and Construction Trades Department, AFL-CIO, in creating the National Disputes Adjustment Plan, the first such agreement ever negotiated by the Department on a national basis with any employer group. The Plan's basic objective is to prevent disputes from arising on projects of member companies and to settle without work stoppages any disputes which might occur.

The officers of member companies have been enlisted in a joint program with labor union executives to solve field labor problems through securing better compliance with contracts, improving productivity, making better use of available skilled manpower and assuring continuity of work while disputes are being settled through fair and orderly procedures. Through a Policy Committee composed largely of top executives, NCA has made studies of field labor conditions as a part of a program to eliminate uneconomic work practices and to promote full compliance with provisions of collective labor agreements.

Creation of safe working conditions on industrial construction projects is a special concern of NCA. Its Accident Prevention Committee annually carries out a number of programs to enhance the safety of workmen and the public. The Committee's work has been credited with achieving significantly lower accident frequency and severity rates in the operations of member companies.

Work of other NCA groups, including the International, Insurance and Public Affairs Committees, has proved beneficial to Association members, the industry and the public.

General direction of the Association is in the hands of a seven-member Executive Committee. The Ways & Means Committee, composed of former presidents, is responsible among other things for development of long range policy.

NCA is an active participant in the Construction Industry Joint Conference and the International Engineering and Construction Industries Council, and it cooperates with other groups to improve the work of planning and building for the future.

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Mr. GRANEY. My name is J. M. Graney. I am labor relations manager, Ebasco Services, Inc., New York, and immediate past-president of the National Constructors Association. I am accompanied today by Mr. George R. Collins, vice president of the Lummus Co. and now president of the National Constructors Association.

The members of the National Constructors Association are engaged in the engineering and construction of oil refineries, chemical plants, steel mills, and power generating plants.

In fact, we do most of this work throughout the country. Although we are small in numbers, our annual volume, both domestic and foreign, amounts to some $6 billion.

Our association is opposed to S. 3149 for a number of reasons. Many of them were raised by the previous witness, Mr. Healey.

We believe that this bill will go a long way toward eroding the collective bargaining process in the construction industry, which even as we talk today, is in great jeopardy. Let's take a typical example of a city in which an industry fund is in existence.

The employers association in all too many cases has come to relay on the funds gathered from this source as operating funds for the association. I think in most cases you will find that the dues have been eliminated, or greatly reduced, since the inception of the industry promotion fund. All it takes is for the union to threaten to withdraw from this fund, and the employers in most cases will accede to any union demand, no matter how unrealistic it may be.

We have seen in the last 2 years, I think starting last year, wage settlements in this industry that are beyond any comprehension. They have no relation to fact. They are not the result of decent collective bargaining, and they are grossly inflationary, so far as this industry is concerned, and the effect they have far exceeds the boundaries of this industry.

It is our contention they have an effect on the general economy.

Senator YARBOROUGH. That $6 billion annual volume of work at home and abroad, what part of that is domestic?

Mr. GRANEY. About two-thirds is domestic.

Senator YARBOROUGH. What percentage of that of the total construction in America? Do you have that?

Mr. GRANEY. I don't have that. We do not get involved in any domestic homebuilding.

Of the industrial load, it is a very substantial percentage, sir.

Senator YARBOROUGH. Thank you. Go ahead.

Mr. GRANEY. These wage settlements that are inflationary, as I have pointed out, are in our opinion the result of the existence right now of these industry promotion funds. We think that in the tradition of this committee that has for 30 years or more enacted legislation that has been aimed to promote collective bargaining, this committee should take a good hard look at the effect that the current industry promotion funds have had on collective bargaining in the construction industry before it considers this legislation.

It is our contention that if a solid examination were made of areas in which these funds exist, the committee would find, No. 1, that the pattern of inflationary wage settlements since the inception of the fund have greatly increased, and, second, that the dues paid by members of the associations have been greatly decreased.

This is not a healthy situation.

Now, as far as the effect on what you should also be concerned about in addition to the collective bargaining that exists in the industry is its effect on Government work.

Let's take a typical case of the atomic energy job for Weston, Ill.

It has been calculated that if industry promotion funds requiring payments of 5 cents an hour should be in effect in this local area at the time of construction, they will add $1.2 million to the construction of this plant, and that is without any material benefit to the Government.

Senator YARBOROUGH. For the economic reactor?

Mr. GRANEY. That's right.

Now, as I pointed out, the members of the National Constructors Association do both engineering and construction. In performing their engineering services, it is extremely vital that they be free to select materials and equipment from an objective engineering standpoint.

It would be inconsistent with this professional approach to be contributing funds which could be at crosscurrents with any objective engineering appraisal they might make.

In addition to that, the role that the Government would play in the various activities that Mr. Healey pointed out, urban renewal and the other Government-sponsored construction programs—you would be in the same position of contributing to funds that are aimed to influence engineers or designers that have an engineering obligation to do other than be influenced by propaganda.

In many places in the country we work for industries, and it is conceivable that we would be contributing to funds which are at cross-purposes to objectives of our clients.

If we are building a refinery, we could be contributing to a fund to promote electric heat, or one of our members working to build a powerplant, could be contributing to a fund to promote oil heat. There is no interest to us, the engineer-constructor, and no interest to our client.

It is because this legislation, if passed, will have a very serious effect on collective bargaining in the construction industry—and it is not at all unrealistic; it is very, very practical to assume it will—that we urge its defeat.

Thank you.

Senator YARBOROUGH. Gentlemen, I realize this is a perplexing problem, this question of jurisdiction, and I guess it is still going on, as in the oil refineries along the coast of Texas.

The craft unions have different standards, they have different opinions on competency to do work. Right now there is a difference between two unions there. One is an industrial union and the other is a craft union, and it is perplexing, which should do the work. I want you to understand it is perplexing to us, too.

You are faced with the problem of doing your work speedily, efficiently, thoroughly, and at a profit, and at the same time to give a good product.

Thank you for your contribution.

Mr. GRANEY. Thank you.

Senator YARBOROUGH. The next witness is Gilbert Dorsett of Dallas, Tex., and Robert Wood of Pennsylvania.

Good morning.

STATEMENT OF GILBERT G. DORSETT, PAST PRESIDENT, SHEET METAL AND AIR-CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.; ACCOMPANIED BY ROBERT B. WOOD, VICE PRESIDENT, LIMBACK CO., PITTSBURGH, PA.; AND JAMES H. FERGUSON, DIRECTOR, INDUSTRY RELATIONS, SHEET METAL AND AIR-CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.

Mr. DORSETT. I am Gilbert G. Dorsett, Keetch Sheet Metal Works, Tex., and immediate past president of the Sheet Metal and Air-Conditioning Contractors' National Association. Accompanying me are Robert B. Wood of Pittsburgh, Pa., who will also make a brief statement; and James H. Ferguson, director of industry relations for the national association.

SMACNA is the spokesman for some 30,000 small businessmen, contractors in the United States who are involved in one way or another in the sheet metal and air-conditioning business. This association is, and has been, vigorously opposed to the enactment of S. 3149, its companion bill in the House, H.R. 15198, and the legislative proposals on the same subject that have been before the past several Congresses.

For a number of years, this association and numerous other national contracting groups have utilized industry funds. These funds have been properly managed by the various management groups who have contributed to them. We must point out the fact that these funds have been formed by management, contributed to by management, and have been administered by management for the purpose of advancing the industry in which they are engaged.

We can see no justification for organized labor seeking to have joint administration of these funds. These funds can best be utilized by the groups who know the market, engineers, architects, and others who can have a part in advancing the industry which has made the funds possible.

We again stress that these funds are levied by management, collected by management from management, and are strictly a management function. All unions have a dues structure which they levy against their members for the funding of their union activities. We, who are their employers, certainly do not seek to have any representation on a trust agreement to help them administer these dues.

We have always felt that it was their money to do with as they saw fit. Many activities, such as joint apprenticeship administration, local joint adjustment boards, national joint adjustment boards, and many others have always been jointly funded. The unions pay their portion of the necessary costs from their dues funds, and we pay our portion. There is no more plausible reason for the unions to have trustees on our funds or dues, than there is for us to have trustees on their dues.

Perhaps a point must be cleared up which has seemed to confuse many people. An industry fund is not considered a fringe benefit to any person or group. It has been established as an amount per hour on each hour worked by the union members for his employer. The only reason that this has been done is because it enables each employer to be sure that he pays equitably for his part of the fund. Since each employer must make a report for the various health and welfare, pension, vaca-

tion, and other funds for the benefit of the union members, it is a very simple matter for him to use the same tabulation of hours that have been worked, to establish his payments to his industry fund.

Another point which seems to need clarification is the opinion of some people that this issue would remain of a permissive nature. Such is considered highly unlikely by those familiar with construction industry bargaining. If a union knew that they could gain the control or veto power of the management groups' dues or funds, it would most certainly be their aim to do so. Knowing that it could be done, they would use every method, including work stoppage, to attain this end.

One must realize that through the power of strikes alone, the unions could attain this so-called permission. When a union is on strike, the members can usually find some other employment to make their expenses, but the employer group is out of business and must face a decided financial loss. The fantastic wage settlements which have been a matter of grave concern to Government as well as management, and to responsible labor leaders in the past few months, certainly serve to show the edge which organized labor already has over management. It is our sincere belief that any type of legislation which would allow joint administration of industry funds would make this edge much greater.

Some people who are interested in this legislation have made a number of references to safeguards which they feel can be built into such legislation. As a practical matter, we feel that it would be almost impossible to build adequate safeguards to effectively protect management's functions, interests, and rights; or for that matter, to even fully protect the unions. We certainly feel that management has been honestly and properly handling their funds in the past, and have in no way encroached on organized labor's rights or privileges. On this premise, we can see absolutely no reason for any legislation which would even have to consider safeguards.

Most national contracting associations have a method of settling grievances and disputes which may arise from their working agreements. The Sheet Metal and Air-Conditioning Contractors' National Association, with the cooperation of the Sheet Metal Workers' International Association, have adequately handled these issues in the past. Through a system whereby the International Union pays their part of the cost and SMACNA pays its share, we have jointly reduced work stoppages or strikes to practically zero on these issues.

This has been satisfactorily done without either side having any power of veto over the other's funds. We do not feel that this could have been accomplished, nor our National Joint Adjustment Board function properly, if such a confusing situation existed. Again we can see no reason for changing a system which has proved to be working smoothly and to the advantage of both labor and management.

I should also point out that many other construction industry segments—particularly the electrical—have had dispute settlement machinery many years on a pay-your-own-way basis and have felt no need to change to a basis whereby management would pay all the freight. It is difficult for us to believe that Congress would want to disrupt these long-existing plans just to satisfy the demands of a small segment of the industry.

To summarize our viewpoint, we wish to make it known that we, as individual contractors, as well as representatives of our national as-

sociation, feel that it should be our right to raise our own funds to further our industries, thereby furnishing more job opportunities to the union members who are our employees, without any possible hindrance from any group who may not wish to recognize our managerial rights. In our Nation, which recognizes and is based on the free enterprise system, we who represent the management side of such a system, should be entitled to some management prerogatives.

We earnestly solicit your consideration of our position and hope that you will help us to retain administration and control of our own funds.

Thank you, sir.

Senator YARBOROUGH. Thank you, Mr. Dorsett.

Now, you heard Mr. Buster's testimony this morning?

Mr. DORSETT. Yes, sir.

Senator YARBOROUGH. He spoke about the painting industry, the employers and the unions.

I gather from your statement here that that wouldn't be true that unions wouldn't be contributing to the industry promotion funds, or hadn't been in the past. Has there been any joint effort at industry promotion between management and labor in your industry?

Mr. DORSETT. No, sir, there has not been in the past.

Senator YARBOROUGH. If you have an industry promotion fund, wouldn't you welcome some contribution from the employees? You have 30,000 contractors in the sheet metal business. I imagine it is like everything else. Construction involves technological processes, and methods of doing things in the field of industrial engineering that nobody wants his business liquidated, and technological advances have liquidated more businesses over the last half century than all other causes.

I feel that that is true, and I hope this bill passes, but I hope it passes only if we have good results. It is no credit to us if we pass bad legislation. People are afraid of most new legislation, and sometimes it is proved that this fear is well grounded.

When we get new legislation, American ingenuity often works it out. If the bill passes this session, I am hopeful that these things that you gentlemen fear won't come true. We are not here to slow up the industrial growth of America, but to promote it. We stay ahead in this world only by brainpower. We have used up so much of our natural resources that stores of them in other continents far outweigh ours. We have got to use our brainpower to stay ahead, and American industry so far, I think, is ahead in the world, but we have got real tough competitors across the seas, as we know, in Germany and Japan in particular, and I am counting on you gentlemen, if this bill passes, to use that American ingenuity and know-how to make it work constructively for your own benefit.

Mr. DORSETT. Sir, I would like to point out that we in management have published all of these various publications to take care of the situation you were talking about, to keep our business from deteriorating. These are modern ways of meeting technological problems.

Senator YARBOROUGH. You don't have any cooperation between labor and management?

Mr. DORSETT. No, sir; these are published strictly by management.

Senator YARBOROUGH. If you have extra copies you desire to leave, the committee will accept them, and I will order them filed as ex-

hibits. They are too voluminous to reprint, but if you have surplus copies, if you care to leave them, I will order them filed, and incorporate them by reference and instruct counsel when the committee comes to consider this bill in our executive session to have these available for our examination.

Mr. DORSETT. Thank you.

Senator YARBOROUGH. You are accompanied by someone else, Mr. Dorsett?

Mr. DORSETT. Yes, Mr. Wood.

Senator YARBOROUGH. Do you have an additional statement?

Mr. WOOD. I would like, Mr. Chairman and Senator Fannin, to elaborate on Mr. Dorsett's remarks.

My name is Robert B. Wood, I am vice president of the Limbach Co., Pittsburgh, Pa., director and vice president of the Sheet Mental Industry Association of Western Pennsylvania, as well as a director of the Sheet Metal and Air Conditioning Contractors' National Association.

I wish to speak to you primarily as a contractor. What affects our business and its costs will affect our customers' costs, including the cost of buildings for the U.S. Government.

Industry funds are taxes by businesses upon themselves to achieve common objectives. These objectives are goals consistent with the goals of our economy—to make more effective and efficient the relationships, procedures, and processes of our business, the construction industry.

It has also been traditional that responsible management has control over the funds needed to advance its industry.

S. 3149 is a bill which would let labor share with management the direction as well as the control of industry funds. They would thereby determine: First, how, where and when there is to be advancement of the industry; and, second, the financing of committees supposedly to interpret provisions of collective bargaining agreements.

The vast majority of businessmen—contractors—are opposed to both of these incursions into their proper function in our economy. The industry funds as now managed cannot be used for antilabor purposes. But managed by labor, they would be used only for programs exclusively advancing labor—particularly labor leaders' goals. There is perhaps nothing wrong with advancing their aims, but why with industry moneys?

If labor agents control these funds, vital interests not directly and immediately furthering their causes would go under—to our detriment and to the disadvantage of increased productivity and quality. The long-suffering construction customer, including the U.S. Government, would be the ultimate loser.

You gentlemen know the awesome power of the construction unions today. We merely have to look at the inflationary wage settlements forced on contractors in the last couple of years and at the accelerating trend right now.

For instance: In Columbus, Ohio, an increased wage package for steamfitters of $3.445 over 3 years was forced on top of a wage package already $4.645 per hour. This is a 74-percent increase. In addition, the contractors were stuck with many restrictive conditions in the contract.

For instance: The Detroit roofers, already making $4.67 an hour, got an increase of $3.25 for 4 years.

For instance: The sheet metal workers in Detroit, who were at $4.50, received $3.275 in a new 4-year contract.

The unions are powerful. The industry has been fragmented by its very nature and has been relatively weak. If there is to be balance, industry must gain strength.

Labor law strives both to set the law of contracts in labor-management relations and to protect the weak from the strong—to equalize power.

Senator YAROBROUGH. Pardon me.

Senator Fannin, would you take over? I have to take a call from the White House.

Senator FANNIN (presiding pro tempore). Go ahead.

Mr. WOOD. S. 3149 will further weaken the contracting industry relative to the big construction unions. Let us examine separately the two parts of this bill; first, that which would permit the union to control expenditures for industry promotion.

Our industry funds are used to research products and methods, to establish standards, to develop new products which will be better and cheaper, to educate ourselves to be more effective businessmen and to educate our employees for greater efficiency and quality performance, and also to establish better understanding between customers and ourselves. A relatively new use—but an important one—is the use of funds to recruit and train minority people in our efforts to act affirmatively to increase employment opportunity.

Unions in many cases have tried to thwart all of these aims.

The Sheet Metal Contractors' Association has been conducting research into more economical ways of conveying air for heating and cooling buildings. The traditional material for this is custom, handfabricated, sheet metal ductwork, and one research project is examining other possibilities which can reduce the builder's and thereby the ultimate owner's costs. The use of fiberglas ductwork is one such possibility in certain applications. Yet, one local sheet metal union initially refused to handle it as they claimed it reduced labor content.

Another is flexible duct which permits snaking air conveyor tubing from various fixed points instead of making several stiff, handmade, expensive turns and joints. There are, obviously, economic advantages and, therefore, some local unions restrict the use of this material. Obviously, research in these directions would be discouraged by union control.

The point is: If industry funds are to promote and advance the industry, they must be expended on such innovating projects. Can the unions seriously be expected to vote "yea" for these? Can union agents really risk voting for increased productivity when their members object?

In the Pittsburgh negotiations this past summer between contractors and the sheet metal workers, we proposed to the union the following mutual guarantee to become a part of our understanding:

> It will be counter to policy and forbidden for any union officer, contractor, or employee to restrict the use of equipment, methods, and materials on the job. It is further provided that the union will actively cooperate in seeking and using new and better methods, equipment, and material.

We thought this a rational suggestion which would benefit our industry and our economy generally. We were advised that the union would take a strike rather than incorporate such a concept in the contract.

I have within this past month proposed to union leaders with whom I regularly work and whom I know and respect that we jointly (and out of industry funds) set up a preapprentice orientation and training program for all races, color, and creeds. This was rejected out of hand. I feel we contractors will go ahead alone in such endeavors for we see a problem which we must help solve. Could we contemplate such action if you in the Senate and House pass this bill? We do not think so.

In sum, gentlemen, the constructive use of industry funds for industry advancement would be so impeded under union jurisdiction as to render them useless to us.

As to the second purpose of this legislation—the joint interpretation of labor agreements—others can speak at greater length, but a couple of points are in order.

The union has a dues structure. Management collects industry funds, an analog to dues. Each party—union and management—has a function, and a rightful and a proper one. Why confuse the two by confounding the funds? Management has no wish to ask the union to help in its administration of its members' dues.

If the funds are jointly administered, union agents would find innumerable reasons for interpreting and adjudicating our labor agreements if there were no cost to themselves or their funds in the process. We would proliferate the demands for interpretations and multiply disputes if the union agents can use business funds. If the union controls the funds, then no disputes, interpretations and adjudications, no matter how vital or just, could be heard that the union didn't want to get heard.

The language of this bill permits the union to trade its assent to the contractors for conducting good programs in industry for more inflationary benefits clauses for the union.

It confuses the union's legitimate function of representing its members in matters of wages and working conditions with those which have nothing to do with proper representational functions of the union agents.

The union agent who is paid through the dues of the union members must be beholden to those members serving their interests. It is possible that union agents whose time could so well be supported by industry funds would no longer feel dependent upon their membership, and the union and its democracy would suffer thereby.

The consequences of Senate Bill 3149 would ultimately be not only to weaken the contractor further, but to destroy the free collective bargaining process. It would also, I believe, encourage collusions against our interests as citizens. It would dilute the impact of antitrust legislation—of which contractors are most respectful—because unions would enter into fields in which they would dominate management, but were not held accountable under antitrust legislation.

It is not a prolabor bill, but it is antibusiness—and small business at that. We ask the defeat of S. 3149.

Thank you, Mr. Chairman.

Senator FANNIN. Thank you, Mr. Wood.

You feel, then, as others have pointed out, that if this legislation is enacted the unions would have the prerogatives that are rightfully business prerogatives.

Mr. WOOD. I feel that, but the fact that they are prerogatives is less important than that the efforts we have that are work-saving——

Senator FANNIN. You think it would prove to be detrimental to the union's interest in the long-range program?

Mr. WOOD. Yes; but many of us are not capable of looking that far.

Senator FANNIN. You don't have to look very far if you look into competitive problems. I wondered whether you thought this was one of the most important factors involved.

Mr. WOOD. It is.

Senator FANNIN. This legislation would give unions more and more involvement in spending the money, and that is what you feel would lead to these troubles.

Don't unions have built-in opportunities through observer systems?

Mr. WOOD. Yes, sir, they do, and at least in our area the unions do cooperate with industry promotions, but they are financing their share out of their funds. This works well.

Senator FANNIN. They are part of the overall program, but under this proposal you feel that management would be furnishing all of the funds, although the unions maintain that this is a part of their program?

Mr. WOOD. That is correct, sir. I feel that if the unions have the opportunity to manage these funds through passage of this, or similar legislation, there are many things that we are now doing that we could no longer do, because the unions would have no interest in these things.

They would not have an interest in flexible ductwork, as one example.

Senator FANNIN. It is necessary, if you are going to be competitive?

Mr. WOOD. We must have it if we are going to be competitive.

Senator FANNIN. You were talking about sales promotion and so forth. Are these not normally management's responsibility? This is somewhat repetitious, but I would like to have you expand on that, because I feel it is very important.

Mr. WOOD. Thank you, sir, and I do, too.

The unions, understandably, are not particularly interested in engaging in sales promotional activities, or advertising, or industrial engineering, or plant locations. Their interests are more centered on representing their people in the matters which are immediately to their interest.

Therefore, the unions would tend to hamper the use of moneys for such purposes.

Here are publications we have put out ourselves. Metal roofs for economy; air-handling specifications, which has been presented to thousands of architects throughout the country so that they might more clearly and more economically specify their work so that contractors might bid uniformly.

Duct manuals for sheet metal construction, so that engineers and our own members and contractors throughout the country can use these manuals to determine the best methods of fabrication; the most economical, and the highest quality.

We think that while the unions should have interest in these things, they rarely pay attention to them. They get elected for representing the members in grievances and wage negotiations.

Senator FANNIN. Your industry is involved in the export business; is it not?

Mr. WOOD. Very limited, sir.

Senator FANNIN. I realize that as far as our competition with the other countries of the world, it is our great desire to promote exports—I know as far as the fabricating part is concerned.

I was wondering if, in the manufacturing business, it is very much involved in export.

Mr. WOOD. Yes; the manufacturing end of our business is, and some of our members do have export business, in the sense that they do construct with American materials overseas.

Senator FANNIN. To a limited extent in Arizona we do have some of the air-conditioning firms that are in export trade.

This is an important factor as far as their costs are concerned.

Mr. WOOD. It would be.

Senator FANNIN. I thought we would have someone more directly involved in that who would testify. I think this is one area we should probe into to see if we are going to affect to some extent our competitive position with other countries in the world.

Mr. WOOD. I would say that is a proper observation, sir.

Senator FANNIN. Thank you very much. We appreciate your testimony here today. It is very helpful.

Mr. Dorsett, thank you. I did not have an opportunity to hear all of your testimony, but I do appreciate your being with us.

Mr. WOOD. We appreciate the opportunity, sir.

Senator FANNIN. Mr. Larry P. Mutter and Mr. J. D. Mack.

STATEMENT OF LAWRENCE P. MUTTER, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS; ACCOMPANIED BY J. D. MACK, EXECUTIVE MANAGER

Mr. MUTTER. Mr. Chairman——

Senator FANNIN. We appreciate your being with us here today. Proceed as you desire. If you want to read your complete statement, do so, or any way you desire to handle that.

Mr. MUTTER. Thank you, Mr. Chairman. I have a statement to file with the reporter, and in consideration of time I would like to make a couple of points and then ask Mr. Mack to give some observations that he has had from personal experience.

(The prepared statement of Mr. Mutter follows:)

PREPARED STATEMENT OF LAWRENCE P. MUTTER, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS

My name is Lawrence P. Mutter. I am Executive Director of the National Association of Plumbing-Heating-Cooling Contractors.

Mr. Chairman and Members of the Subcommittee, I am here to speak on behalf of some 8,500 members of the National Association of Plumbing-Heating-Cooling Contractors who oppose the legislative proposal being discussed here today.

In our particular industry, we have some 70 industry funds presently being operated without any difficulty throughout the United States. These funds are beneficial to both the union and contractors. The question arises: Why tamper with these funds at all, especially since they are presently being operated most effectively?

The main argument the proponents use in advocating this bill is that they shall be permissive and not mandatory in collective bargaining. We know that as a practical matter this would not be the case.

In 1956, the Air Conditioning & Refrigeration Association of Florida, Inc. jointly managed an industry fund with UA Local No. 725 of Miami. The fund was administered by a joint committee of four members from the Union and four from Management. After two years of accomplishing nothing, the joint agreement was opened and the promotion fund stipulation was removed.

In another case in the same area, a union agreement was negotiated in 1952 in Miami which called for the contribution of five cents an hour to a board for the purpose of industry promotion. At the time, this fund was recognized as being management's money. This was completely agreed upon and it worked without any problems.

Later, the local union decided they wanted to have a share in running the fund. Finally, in the agreement of 1956, a compromise was reached and the fund became jointly administered.

The industry fund then halted operations and later they decided that either they were going to return to a management-controlled fund or they were not going to have any funds at all. A strike occurred which management lost and with it the industry fund was abolished.

The industry advancement or promotion fund is legal as it stands under present law, although S. 3149 does not adequately distinguish between trust funds whose basic purpose is to develop and promote a specific product and a trust fund to promote the general welfare of the construction industry. There are many of the funds in operation throughout the United States which may or may not be jointly administered by management and labor. This is where S. 3149, for all practical purposes, would force all such funds to be jointly managed by union and management.

Senator Robert Griffin, who opposed this piece of legislation during his tenure in the House, stated that the function of a union is to represent employees with regard to wages, hours, and working conditions. Senator Griffin went on to say that such legislation dealt not with wages and working conditions but dealt with the advertising, research, and promotion of the industry and products. He stressed that these were exclusively management functions.

I believe that one can readily see that S. 3149 would be utilized by the unions to meddle with management's policies which have little, if any, relationship to labor's interests. These are the responsibilities which have been historically exercised by management and which have preserved the independence of our free enterprise system.

If labor were permitted to jointly administer such funds, it would undoubtedly carry with it a veto power which could be exercised whenever it disagreed with the employer as to the use of such funds. Union participation, therefore, means union veto. The union representative motivated by the irresistible pressure of his membership, could demand that such funds be used for items of exclusive union interest. This would result in the fund being partially directed by men whose first responsibility is to their member employees, rather than to the difficult and intricate problems the employees must resolve in working out their mutual well-being with respect to the business and public aspects of their industry.

It is obvious then that the purpose for which these funds may be jointly administered do not fall within the conventional term of wages, hours, or other terms and conditions of employment. These items directly affect the employee and Section 302(c) permits the joint administration of any funds designed to directly benefit the rank and file. In this respect, the National Labor Relations Board in its Mill Floor Covering decision stated:

> An industry promotion fund seems to us to be outside of the employment relationship. It concerns itself rather with the relationship of employers to one another or, like advertising, with the relationship of an employer to the consuming public.

S. 3149, limited as it is to a single industry, constitutes an unreasonable and unjustified infringement upon employer responsibility, and has no legitimate connection with the employment relationship.

Moreover, no valid or persuasive reason has been advanced for requiring the employer to abandon the exclusive management of such funds where, under his guidance, they have developed into an effective institution benefiting the employer and the public at large.

In light of these well-known facts of collective bargaining life, and the con-

siderable power which may be wielded by some unions in the construction industry, it appears inevitable that a skilled labor negotiator would have little difficulty in making such funds a mandatory subject of collective bargaining. The permissive power to bargain over these funds will unquestionably be an invitation to the unions to exert their influence in the establishment of such funds, even within those employer groups where no such funds had previously existed. Therefore, the legislature would appear to have as high an obligation to properly appraise the practical aspects of a statute's enactment as well as the considerations of policy and theory which may have led to its introduction.

Moreover, the construction industry is one in which an employer must utilize various craftsmen, represented by competing unions, in order to perform his services. Many of the employers in this industry have contracts with a dozen unions or more. Strong rivalries exist between these unions as to the jurisdiction relating to a product or service to be employed in the construction process. The carpenters and plasterers represent one such rivalry, the plumbers and laborers another, and the millwrights and machinists still another. Whichever union proves victorious in a jurisdictional dispute carries with it additional jobs; however, the employer generally suffers.

The pending legislation will create a climate which will expedite the rapid resurgence of jurisdictional disputes in certain segments of the construction industry. If jointly administered funds are permitted, it is undeniable that their administration will become entangled in the jurisdictional ambitions of the unions involved. It is apparent that unions could exert tremendous pressure to assure work assignments to their craft if they had an equal voice in industry advancement funds.

In turn, there would be created additional problems in the administration of joint funds and present for management a burden which it may wish to be shed of in the face of such obstacles. This will result in the dissolution by management of product promotion programs, thereby denying their recognized advantages to the public as well as to the industry.

A serious objection to this legislation may be found in the fact that its coverage is limited to the construction industry. The advocates of the Bill extol its alleged virtues. However, if jointly administered advancement funds are desirable to both labor and management, then they should not be restricted to the construction industry.

Past hearings amply reveal that industry advancement or promotion funds exist in considerable number outside of this industry. Likewise, Section 302 covers a broad range of labor-management relations in virtually all industries affecting interstate commerce. It would appear to be basically unfair and discriminatory to subject the employer in one particular industry to the provisions of S. 3149 without his counterpart outside the industry being also included within it terms.

It would seem highly inappropriate that Congress lay down rules designed to affect one industry without also including other industries where similar funds are found.

As the law now stands, each party to a collective agreement is free to choose its own agents, free to assert any and all claims and defenses, and free to compensate such representatives as it sees fit. In fact, the underlying rationale of all federal labor relations policy has been the encouragement of arms-length collective bargaining. This process necessarily requires free unions and free management, each asserting its own right and each assuming its own obligations. This procedure is the converse of any concept of collusion, commingling or the lack of identity. The pending amendment, if enacted, would impede rather than strengthen the collective bargaining process.

The Bill, therefore, would impair the independent, arms-length settlement of grievances and disputes which for so long has been a fundamental principle of our labor management relations. It follows that the Bill could constitute a serious erosion of the national labor policy which Congress has so painstakingly sought to preserve and to foster.

Thank you.

Mr. MUTTER. I am very happy that Mr. Mack of our affiliated California association is here, primarily by virtue of the fact that his State is one of the pioneers in the formation of industry funds in the plumbing, heating, and air-conditioning industry, and perhaps has more funds than any other State in the Union at the present moment.

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In point of comment, we have spoken with various Congressmen and Senators on this bill and have attempted to elicit what the prevailing opinion might be, and we find that there are two opinions expressed effectively that concern us. We do not feel they square with the facts. There seems to be a misinterpretation of some of the terms of this bill.

Primarily, there is the one that refers to its permissiveness. This point has been made several times this morning that—well, they tell us that if you don't like joint management, or the fund or the arrangement that could grow out of this bill, you could say, "We will not bargain on that, it is not a mandatory subject."

But anyone experienced in collective bargaining knows that it is simple by indirection to incorporate a nonmandatory subject into discussions by tying it to a mandatory demand.

Secondly, we are concerned about the fact that this phase of interpreting agreements, providing a kind of arbitration service to be financed by the funds, that this would be a good thing, that it might tend to eliminate strikes, and it might promote lengthy labor peace.

This would be fine in interpreting some point of the agreement that came up during the life of the agreement, but as we understand this part of the bill, it does not provide for any settlement of a new agreement once the old one expires.

We have the industrial relations council which includes the United Association of Plumbers & Pipefitters, and that machinery is there to use in a very inexpensive way if a local agreement runs out and the parties locally cannot reach a new one. It is a fairly simple matter to submit the dispute, to appear before the council, to submit the evidence, and then accept the decision of the council.

One of the important points is that there can be no case heard either if there is a lockout or a strike. The work must continue, and there is usually a very prompt hearing. We have had this machinery since 1950.

The last point is really a third point that we are concerned about, the fact that we have seen statements made on the House floor, for example, when there was consideration of this bill under suspension of rules, not too long ago, to the effect that it was the opinion of certain Congressmen that this bill had no bearing whatever on our type of funds.

I say our type of fund, because almost all of the funds in the plumbing, heating, and cooling industry are generally industry advancement funds as such, and this bill supposedly only relates to product.

We are very fearful that even with the legislative history of these opinions being expressed, that should the bill pass, the initial idea would be that it would apply only to product. It would take perhaps only one court case challenging it so that the joint management would automatically apply to the general industry advancement funds, such as we regard as typical in this industry.

With that, unless there are questions, I would stop in deference to Mr. Mack.

Senator FANNIN. When you speak of the veto power, you feel this would not be used beneficially as far as these industries are concerned. In many instances you feel this might be used irresponsibly? You speak of veto power in your statement. You say that it would undoubtedly mean that veto power could be exercised.

Mr. MUTTER. Yes; this would be automatic. If the employers made a proposal to undertake a certain program which they felt would be useful to the industry, with the joint management situation, the union could automatically veto it. I made that point in consideration of the fact that now, as these funds are constituted, in many cases the union representation is there as observers and to express their opinion and to make their helpfulness felt, and even without this power to vote, I am sure you realize the employers most of the time would respect those opinions.

If the present bill is allowed to become law, there would be an automatic veto, and the employers could do nothing.

Senator FANNIN. I am thinking about it from the standpoint of the consumer, who of course is paying the bill. With the new innovations that you and other witnesses have talked about, perhaps these could be utilized to lower costs, particularly when we get in the housing we are trying to promote for the underprivileged or for people who cannot afford, perhaps, to buy a home.

If they had this type of equipment, that would perhaps cost less. Yet this could be vetoed by the unions then, you feel.

Mr. MUTTER. Yes; because it would eliminate any research that the industry fund might otherwise make into examining the merits of certain new products.

Right now, one of the big things, of course, in the plumbing industry is the matter of plastics. There is a tremendous battle going on between the plastics interests and the metallic pipe interest. The matter of prefabrication is still a big problem. There are antiquated fabrication clauses in these plumbing and pipefitting agreements, and sometimes they are suddenly called into play to require that some of this more sophisticated air-conditioning equipment be disassembled and reassembled by hand, many times invalidating the manufacturer's guarantee.

I observed that the President the other day called for a committee to try to work out a new concept of housing whereby a house could be brought for $5,000.

This kind of thing is not possible when the approach is through making work or not taking away work, not taking away man-hours.

Senator FANNIN. I was thinking of some of the innovative materials that were incorporated in the homes that were constructed in connection with the—I can't think of the name of the home that was built as something of the future. It did incorporate prefab equipment. It was very much lower in cost.

Would you feel that the provisions in this bill, would interfere with carrying forward these prefab homes that could lower the cost to the consumer?

Mr. MUTTER. This would be the case in interpreting the agreement, because it would then carry over into the question of what they would handle, items coming in that had been assembled, or partially assembled by the industrial union in a plant wouldn't be handled for final assembly by the construction trades and so forth. It could very well come into play in interpreting the agreement.

Senator FANNIN. In this arrangement, as far as mandatory aspects are concerned, if the employer would agree to bargain on the joint industry fund——

Mr. MUTTER. This was the point I was referring to when I said that even though it was a permissive item, the employer could not escape from it, because mandatory subjects would be brought into the bargaining discussions by indirection.

In other words, it would be very easy to say, "If we are going to talk about a fund, we will talk about a settlement for 70 or 80 cents an hour, and if you refuse to bargain on the grounds that it is not a mandatory subject, it is $3."

That kind of thing.

Senator FANNIN. Thank you very much, Mr. Mutter.

Mr. Mack, do you have a statement?

Mr. MACK. Yes, Mr. Chairman.

My name is J. D. Mack. I have been in this industry for 19 years, and I was actively engaged in this industry at the inception of industry funds.

There are two points in this bill. One is product promotion and the other is the interpretation of collective bargaining agreements. I would like to touch on both of them.

On the product promotion, I think this originally was started by the plastering contractors, and this is really understandable, because we only deal with one product there, and that is plaster. However, in our industry, in piping or mechanical trades, we are dealing with over 1,000 items.

I can understand where plastering could go out to promote plastering in itself, and this possibly has merit. When you get into the mechanical trades, where you are dealing with mechanical items, we are in a very, very awkward position.

If we oppose any item that is being put on the market by a manufacturer, and labor in many instances wants us to oppose the manufacture of this item, plastics, for instance, we are putting ourselves—as management—in a position of restricting trade, and we could be brought before the court.

Labor, as a matter of history, is free from this, but we would not be free of it, and this could cost us a great deal of money, and that cost would be reflected to the general public.

On the other hand, if we promote our items at the inception of labor, this is not our business. We think this is strictly the responsibility of the manufacturer, if a manufacturer has a good item, and they can guarantee it, and the guarantee is worthwhile, and we feel that we can use that item to our benefit to cut the costs of labor, it is our duty to use this item.

Even though this might cut down the cost of labor, which labor certainly would not be in favor of, we owe this to the public to follow up on this and promote items that would cut the cost.

In California, we have labor costs that run over $10 per hour per journeyman. We hire around 35,000 journeymen in California. I think nationwide there is about a quarter of a million.

We have journeymen now who are making $18,000 to $20,000 a year. If this goes in effect, this what can happen as far as the interpretation of collective bargaining agreements are concerned.

Right now in the interpretation of the agreement, if we have an argument, it goes to arbitration, and the loser of that arbitration proceeding has to pay.

For example, if labor loses, they pay the bill, and if management loses, they pay the bill.

A little over a year ago we had a case in Los Angeles with costs about $8,000. Labor lost and paid it. We have not had one case go to arbitration since then. The result is that management and labor get together and settle their differences without going to arbitration, and this is what should happen. It makes sense.

Under this proposed legislation, anything that goes to arbitration will be paid for out of this joint industry fund, and this is management money, not labor money. We are paying it all.

The result is that labor will put every argument they have into arbitration, knowing whether they win or lose, it doesn't cost them anything.

Where you have had one case go to arbitration in the last year and a half in southern California, you would have them going to arbitration several times a week. There is no question about it, every argument would go to arbitration, because, as I have said before, it would cost labor nothing.

Figuring on the basis of only 20 cents an hour to handle this cost, and I am positive it will run a great deal more than this, figuring on this basis, it would cost just in California around $1.50 a year, if our calculation would be on the basis of 20 cents an hour, and I can foresee that it would cost the public $1 an hour. This is only in one State, and you can imagine what it would be nationally.

The public could really be faced with a situation where housing, the cost of housing, would be up so astronomically that they just couldn't afford it.

As it is now, though we pay over $10 an hour in areas, we are suggesting that the contractor, due to his overhead of insurance and trucks and office rent and office staff, we suggest that we charge around $20 an hour so that we can come out on this, and this is a lot of money.

If you have two men working on a job at $20 an hour, that is $40 an hour, and if they work eight hours in 1 day, that is $240.

This is much more than the average person gets in one week. If you add to this the cost of arbitration, it is skyrocketing again.

Senator FANNIN. I wonder if you would clarify. You are talking about cost of over $10 an hour. Is the wage scale over $10?

Mr. MACK. The wage scale is over $10.

Senator FANNIN. And it isn't other benefits and costs?

Mr. MACK. That includes the hospitalization and insurance, and so forth. It cost the employer that much. The joint industry funds are going to increase this.

We feel as it is now with the journeymen making $18,000 to $20,000 a year, they can well afford, if they lose an arbitration, to pay for it.

Actually, the average journeyman today makes more than the average contractor. This seems ridiculous, but this is true.

Senator YARBOROUGH (presiding). Do you have data on what the average journeyman makes a year in the United States?

Mr. MACK. Mr. Mutter may have that.

Mr. MUTTER. The Bureau of Labor Statistics issues that quarterly. They have a 100-city survey of hourly wages, and then indicate the average weekly earnings.

Senator YARBOROUGH. We can get that.

Mr. MACK. Going back to joint industry funds, we had joint industry funds starting in 1952, and they were in effect for about 5 years.

One of the previous witnesses stated there was no suspension against joint industry funds.

I disagree with this. I had active experience in joint industry funds through several unions in California. As a matter of fact, in one union, the business agent out of industry funds paid the rent of the union hall.

They paid the full rent, so it saved the union a considerable amount of money. There was no rent charge to them. It was legal because the industry fund meetings were being held in the union hall.

We had one instance where the business agent hired a secretary to handle industry funds, but that secretary spent 90 percent or her time working for the union. Unfortunately, in this industry, when labor meets with management, management has two strikes against them, because they are employing men from labor, and the business agent wields a considerable amount of power over management or the contractor.

If this man from management sitting on a committee doesn't accede to what the business manager wishes, they can really put plenty of heat on him for the men that he gets from the union hall. So this, unfortunately, puts us in a very, very unbearable and intolerable position of having to accede to labor's demands.

Historically, labor has only bargained for wages, hours, and working conditions. It has been this way ever since the beginning of the labor movement, and I think this is reasonable, and I think it is fair.

If you put this in, we are going to be financing labor for all their labor disputes. We are going to be financing labor for any product that they want to push or that they want to kill.

This is none of labor's business. What materials the contractor handles is his business. We hire people to put in the product we want to use. We want to use a good product if we can get it put in at a reasonable cost, and if a manufacturer can give us that product and guarantee it and his guarantee is good. We do not think it is the business of the employee to tell us what we are going to put in.

I don't think any business can work under those conditions, whether it is General Motors or Ford Motors or General Electric or the construction industry.

Gentlemen, these are very, very important points. Another thing, if we are going to pay all the costs of the labor disputes, you can imagine the increased—it is going to increase construction costs, and the Lord only knows that construction today has increased way, way beyond anything else.

We are going to put a load on your constituent and the public that they can't possibly bear up under.

We talk about low-income housing. It is going to be high-income housing.

Senator FANNIN. Mr. Mack, one thing: You talk about union interests. Safety is a factor in which the union has an interest and so those materials, if they did pertain to safety, I would say the union does have a right to voice their opinion.

Mr. MACK. I agree, and we have a joint safety committee. In California it is required under the law that we have tailgate meetings

every 10 working days. We have a booklet on safety that we put out to all our contractors showing them how to conduct a meeting, what to discuss at the meeting——

Senator FANNIN. I am talking about the utilization of the materials.

Mr. MACK. This includes materials.

Senator FANNIN. But when you make a statement that they haven't any interest as far as type of materials used, I would say that is questionable, because they do as far as safety is involved.

Mr. MACK. I agree, if it involves safety. We work with labor on that.

This is my complete statement. If you have questions, I would be glad to answer them.

Senator YARBOROUGH. I have received notice that the Senate has agreed for us to continue to sit this morning.

I have no question. Unfortunately I was called out on a very urgent matter. Thank you, Senator, for conducting the hearings in my absence.

Senator FANNIN. Mr. Chairman, I believe they want their complete statements incorporated in the record.

Senator YARBOROUGH. They will be incorporated in the record. They are all to be printed in the record.

(The prepared statement of Mr. Mack follows:)

PREPARED STATEMENT OF J. D. MACK, EXECUTIVE MANAGER, PLUMBING-HEATING-COOLING CONTRACTORS OF CALIFORNIA

S. 3149 would amend the Labor-Management Relations Act of 1947 to permit Joint Industry Funds to be established and used for product promotion and for the interpretation of collective bargaining agreements. Although these Industry Funds would be financed exclusively by the employer, their expenditures would be determined jointly by labor and management.

The two stated purposes of this bill, product promotion and the interpretation of collective bargaining agreements should not be the financial responsibility of the contractor in the construction industry. Forcing management to finance these two items places an additional unfair burden on the construction contractor, and will, without any doubt, increase the cost of construction.

PRODUCT PROMOTION

Construction contractors normally use thousands of products and believe that each product should stand on its own merits. To oppose a product is an unfair restriction of trade; to promote a product is the responsibility of the manufacturer. Under S. 3149, pressure could be exerted by labor which could make or break a manufacturer.

INTERPRETATION OF COLLECTIVE BARGAINING AGREEMENTS

At the present time when a labor dispute goes to arbitration, the costs are borne by the loser. Because of this provision, both labor and management make heroic efforts to settle these disputes themselves and only the exceptional case is actually sent to arbitration. Under S. 3149, the employer-financed Industry Funds would bear the full cost of all arbitration proceedings. As labor would never have to bear the cost, they would have no interest in avoiding such proceedings, and the number of cases sent to arbitration would increase tremendously. This would lead to:

1. The allocation of a large percentage of the Industry Funds to arbitration proceedings;
2. The necessity of increasing the employer's contributions to the Industry Fund;
3. The necessity of raising prices to cover increased construction costs;
4. Damage to the contractor's public image because of the price raise;
5. Inflation.

INDUSTRY FUNDS WOULD BE COMPULSORY

Although S. 3149 specifies that neither labor nor management be required to bargain on the establishment of an Industry Fund, in reality, labor could easily demand their establishment. Despite the wording in S. 3149, management would undoubtedly be subject to indirect economic reprisals by the union should they refuse to establish such an employer-financed Industry Fund—a fund which would benefit the unions so greatly.

JOINT MANAGEMENT OF INDUSTRY FUNDS WOULD BE COMPULSORY

Although S. 3149 is purportedly permissive, management's refusal to convert Industry Funds already in effect to jointly-managed Industry Funds would undoubtedly lead to economic reprisals by labor.

JOINT-MANAGED INDUSTRY FUNDS MEANS LABOR-MANAGED INDUSTRY FUNDS

S. 3149 would place management in an untenable position with labor. If management failed to agree with labor on the use of industry funds, labor could force their point by economic reprisals against management.

OPPORTUNITY FOR COERCIVE TACTICS

S. 3149 would substantially harm management and benefit labor. It would present opportunities to labor to utilize the identical coercive tactics that the original Section 302 of the Taft-Hartley Bill endeavored to prevent.

CURTAILMENT OF PRESENT INDUSTRY PROGRAMS

Management Industry Funds are often now used to finance classes in salesmanship, public relations and other subjects designed to raise productivity and promote the industry in general. Under S. 3149, labor might well eliminate such educational projects and insist that Industry Funds be used for purposes of labor's choosing.

INFRINGEMENT OF MANAGEMENT'S RIGHTS

A union's primary function is to represent its members with respect to wages, hours and working conditions. S. 3149 would greatly extend the union's scope of influence. It would take away management's prerogative of determining how to spend its own money and would permit labor to enter a field which has traditionally been reserved for management.

Senator YARBOROUGH. The next witness is Mr. Leon Kromer, executive vice president, Mechanical Contractors Association of America.

STATEMENT OF LEON B. KROMER, JR., EXECUTIVE VICE PRESIDENT, MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA, INC.

Mr. KROMER. Thank you, Mr. Chairman.

This statement is submitted in behalf of the more than 1,200 members of the Mechanical Contractors Association of America, Inc. MCAA is a national association of contractors engaged in the installation of plumbing, heating, air conditioning, industrial, and process piping systems. With over 50 affiliated associations located throughout the United States, MCAA members employ over 125,000 plumbers and pipefitters on construction work that exceeds $3 billion annually.

The bill proposes to amend section 302(c) of the Labor-Management Relations Act, as amended, to legalize joint administration of industry promotion funds whose purposes are directly related to product promotion, product research, market development, and related purposes. It would legalize joint administration of funds to defray the costs and

expenses of joint committees or boards "empowered to interpret provisions of collective bargaining agreements * * *"

Before getting into a detailed critique of the bill, I would like to pose a series of basic questions about the terms used in the proposed legislation:

Who is covered by the bill?

What is covered by the bill?

Who is an "employer of the construction industry"?

It can be agreed that the recognized independent contractor who bids a project is an employer in this industry—a general or mechanical contractor, for example. It can also be an oil company that performs construction work with in-plant employees; that is, industrial workers. It can also be a chemical company that hires building trades mechanics direct for construction work. Certainly these industrial enterprises are, in the context of this bill, employers of the construction industry.

Another question suggests itself: What exactly is the construction industry? It can be agreed that building an industrial plant from the ground up is construction; that expansion of existing plant facilities is construction. Is in-plant maintenance work construction? Is plant alterations work construction? Both maintenance and alteration work is performed by industrial owners and by independent contractors recognized as part of the construction industry.

I raise these questions to emphasize to you, with due respect to its sponsor, that this bill is poorly worded and loosely drafted. It uses terms that are not defined as suggested by these questions. It is a dangerous piece of legislation and its enactment will literally open a Pandora's box of confusion, a variety of interpretations by the courts and the National Labor Relations Board that can only result in serious disruptions throughout all industry.

Let us assume, in spite of the ambiguous language, that this bill does cover the construction contractor as the employer. What are the implications? Members of the committee are aware of industry promotion funds now common in the construction industry. There are thousands of such funds administered by management trustees. Some of the oldest funds in the construction industry are in the mechanical contracting segment of the industry. The programs undertaken by these promotion funds are within the prerogative of management and should not be jointly directed.

The programs include:

1. Working with architects and consulting engineers toward improvement in plans and specifications. The greatest strides in technological advancement in the construction industry have taken place in mechanical installations. There is continuing need for consultation with, and education of, engineers and architects. A number of the funds have been able to engage qualified specialists for this liaison work.

2. Conducting educational seminars through employing the services of highly qualified specialists in specific subject areas. The seminars have included courses directed to top management, to improve management techniques, to middle management, job superintendents and job foremen. The unions have enthusiastically endorsed the latter programs. Indeed, union business agents and other officials have supported and attended such courses.

3. With the need to encourage and educate minority groups to seek employment in the industry, the resources of industry promotion funds have been used effectively. In two instances, funds sponsor a television quiz program with the format of the well-known "College Bowl" national program with contestants drawn from local high schools.

It is estimated that there are over 800,000 viewers—mostly students—in the two cities where these programs are broadcast. The program informs viewers of opportunities in the mechanical contracting industry, the training programs for apprentices and other information to encourage students to enter the industry. These programs have been very effective in reaching minority group students at the desired age level—that is, junior and senior high school students.

Working in the same problem area, another fund has engaged a full-time employment adviser to aid and encourage members of minority groups having an interest in developing skills and abilities to qualify for jobs in the mechanical contracting industry. He has established liaison with various high schools and local community groups and has been successful in recruiting young men of minority groups to apply for the plumbers and pipefitters apprentice programs and as qualified union journeymen.

Within the first three months of the program, 75 minority group applicants were referred to apprentice committees for testing. In addition, 11 minority group plumbers and pipefitters are currently undergoing qualification tests for journeymen cards. The continued success of this program may lead other local associations to resolve the major problem of equal employment in our industry.

4. The resources of industry promotion funds have made it possible for mechanical contractors associations to combat the growing practice of electric utilities of offering subsidies to public school awarding authorities and other owners of construction. Complaints have been filed with public service commissions, suits started in appropriate State courts.

These activities have required the services of experts in electrical rate structures and, of course, legal counsel. Without industry funds, the small businessman could not match the resources of the electrical utilities.

To point out, as has been done, that bargaining over these funds is permissive, not mandatory, is misleading. It is pure fiction in practice. Anyone knowledgeable in collective bargaining in this industry is well aware that a union can, as a practical matter, require employers to bargain over a permissive subject through recognized devices of bargaining strategy.

The provision for product promotion is special interest legislation, because it is designed to overcome a specific problem in only one segment of the construction industry: The decision of the Ninth Circuit Court in the Paramount Plastering Case. The bill meets the special need of this one segment of this one industry that operated a fund found to be illegally administered. On this highly exceptional basis, legislation is proposed that would jeopardize continuation of funds that perform legitimate services to owners and the public.

This bill also constitutes special interest legislation with respect to the provision for joint administration of funds to defray expenses of committees or board in resolving disputes arising over agreements.

Again, it applies to employers in the construction industry. Industrial and independent unions are excluded. These unions will continue to pay their share of expenditures to support their representatives on similar committees or boards. Such a distinction simply cannot be justified.

In most labor agreements, provision is made for mediation and arbitration. The clause includes the requirement that any expenses shall be shared equally. The parties cover their own expenses and share equally the costs of an arbitrator if one is required. There are no special funds. None is needed. This is as it should be and has historically been the case in the industry. This assumption of financial responsibility by each for its own expenses is proper and equitable.

Why the proposed amendment? Because one segment of the construction industry did have special funds to defray the expenses of joint boards or committees for the purposes specified in this bill. Joint administration of these funds has been determined to be illegal. This section of the bill is designed to meet this special situation. This section if enacted will undermine the fabric of existing established voluntary mediation and arbitration committees and boards throughout the industry. This is hardly justifiable. And it would encourage establishment of such funds when they are neither desirable nor necessary.

It should also be pointed out that enactment of this section would shift, through employer contributions to these funds, the entire financial burden of defraying costs and expenses of joint committees or boards to management. In the existing framework of labor-management relations this introduces a novel concept. It is highly inappropriate, unnecessary and inequitable. If it has merit, why not the same treatment, the same relief, to industrial and independent unions outside of construction? Can it be said that such limitation to the construction industry is not discriminatory?

For these reasons, I respectfully urge that S. 3149 not be reported out by this subcommittee.

Thank you, sir.

Senator YARBOROUGH. Mr. Kromer, you say that this bill is poorly drafted. You don't need to apologize for your opinions, and I don't claim any credit on the draftsmanship. Normally if I introduce a bill, I do. In this case, I took a bill that had been supported vigorously in many preceding Congresses. It already passed the House in a preceding Congress, and I followed the rule laid out by Pope, who said, "In words, as fashions, the same rule will hold, Alike fantastic if too new or old: Be not the first by whom the new are tried, Nor yet the last to lay the old aside."

I thought that preferable to a new bill.

Mr. KROMER. Before it passed the House 2 years ago, I made the same objection before the House Labor Subcommittee.

Senator YARBOROUGH. You have been consistent.

Senator Fannin, any questions?

Senator FANNIN. Yes, one question I would like to ask. You say, "Who is the employer of the construction industry"?

I can appreciate the complications there. Consider a situation where a general contractor also manufactures a unit that could be exported—in other words, as a part of his business. I know of one manufacturer from my State who, although he does general contracting work, he also builds prefab unit materials.

Now, would you feel that there should be separate treatment for that part of the work or do you think it could be done?

Mr. KROMER. I think that is true, that it would be difficult to separate the activity, where a recognized contractor is also in manufacturing, and this does occur, but, rather, my objection was on the other side, where an industrial owner, who is in no sense really a contractor, but he does perform construction work, in his own in-plant union.

Senator FANNIN. I notice you said that an oil company would use in-plant employees. Would they come under this law?

Mr. KROMER. It seems to me they would.

Senator FANNIN. But you feel they should not; is that right?

Mr. KROMER. It comes to the objection I have to the lack of definition of terms in the bill.

Senator FANNIN. That is why you are saying that the bill is loosely written, so that you cannot differentiate and pull one apart from the other?

Mr. KROMER. True. If it came to a legal question of an industrial owner who was, in fact, performing construction work with his own in-plant people, they might want an industry product promotion fund of their own, and there might be a serious question as to whether they are entitled to it.

Senator FANNIN. Thank you very much.

Senator YARBOROUGH. Do you have further questions?

Senator FANNIN. No further questions.

Senator YARBOROUGH. Thank you, Mr. Kromer.

The next witness is Mr. Harry P. Taylor, executive director, General Building Contractors Association, from Philadelphia.

Mr. Taylor, you have associates with you. Will you present them to the committee and for the record?

STATEMENT OF HARRY P. TAYLOR, EXECUTIVE DIRECTOR, GENERAL BUILDING CONTRACTORS ASSOCIATION, INC.; ACCOMPANIED BY WILLIAM J. CURTIN AND PARK B. DILKS, ATTORNEYS FOR THE GENERAL BUILDING CONTRACTORS ASSOCIATION, INC.

Mr. TAYLOR. Yes, sir; Mr. William Curtin, from Washington, D.C.; and Mr. Park Dilks, of Philadelphia, both counsel who represent our association.

Senator YARBOROUGH. Thank you. Go right ahead, please, Mr. Taylor, with your statement.

Mr. TAYLOR. Thank you, Mr. Chairman.

My name is Harry P. Taylor. I represent the General Building Contractors Association of Philadelphia, of which I have been executive director for the past 18 years.

Our industry advancement program in Philadelphia was created in 1960 and is the pioneer in its field. Like more recent programs established elsewhere, it is supported entirely by management contributions and is administered by management for purposes which have traditionally been considered as management purposes.

For example, our program undertakes to improve management's operational and administrative efficiency, to develop new construction methods and materials, to educate supervisory and management level personnel, to promote the general contractor's public relations and to increase his business market.

Our program facilities continuing consultations among general contractors, architects, engineers, and subcontractors to help solve the myriad problems which arise in building construtcion.

Our program also pays management's expenses in negotiating and construing collective bargaining agreements and in supplying the management trustees who serve on the boards of the committees which jointly administer various welfare, pension, vacation, and apprentice training funds.

The association for which I speak opposes S. 3149 in all its parts.

Taking section (b) of the bill first, it would legitimate a situation whereby management puts up 100 percent of the money, and the union is given a 50-percent voice in how that money shall be spent in resolving disputes arising under collective bargaining agreements.

This compares with the present practice whereby management and unions, generally speaking, share the costs of resolving their differences. This present practice helps restrain the temptation toward frivolous cases, opulent facilities, and protracted sessions. Section (b) would change this, and would have the effect of putting union officials on management's payroll in carrying out a union function. The dangers of this cannot be overstated.

Section (a) deals with the so-called product funds. Now, as general constractors, we have been assured that the word "product" as used in the bill does not encompass industry advancement programs. For example, when an identical bill was before the House of Representatives on April 1 of this year, Mr. Thompson of New Jersey remarked that in his view contractor groups should not be concerned with respect to the section (a) portion of the bill since:

> . . . the so-called industry advancement programs of these contractors simply do not promote a "product", as the word is used in this bill.
>
> The bill is very specific. It refers only to product promotion, not to general industry advancement . . .

Recognizing the crucial need to define the term "product," Mr. Steiger of Wisconsin stated that:

> "Product" as used in the bill refers, for example, to tangible materials or substances physically incorporated in buildings or other facilities, or the application of such material as in painting or decorating. It does not refer to the activities of the so-called industry advancement programs.

We appreciate the comments of these gentlemen and we recognize that these remarks are now part of the bill's legislative history. However, in order that there be no question whatever and that there be no temptation by an overzealous union to misconstrue the bill's intent, we would respectfully suggest that the word "product" be specifically defined in the bill itself.

Without such a specific definition, unions might mistakenly construe section (a) as giving them an equal hand in administering and spending management's money for programs which, even the National Labor Relations Board agrees, do not deal with wages, hours, and working conditions; and which, therefore, are not of legitimate concern to unions. What is worse, if section (a) were applied to a fund such as ours, some union might attempt to construe it to mean that the union could even deadlock the selection of management's own negotiating team for collective bargaining purposes.

But we wish to emphasize that our objection to section (a) is not

merely technical. On the contrary, our objection goes to the philosophy of section (a) as inviting a gross distortion of the delicate balance between management's right to manage and the union's right to negotiate with respect to wages, hours, and working conditions.

We start with the principle that public policy, as exemplified in section 302, does not favor payments, directly or indirectly, by employers to labor organizations. The exceptions are explicit.

Generally, these exceptions deal with "payments of money * * * for the sole and exclusive benefit of * * * employees and their families and dependents * * *." Where such payments are made, the union may properly bargain for joint administration of the resulting fund. The union's legitimate interest arises from the fact that these funds are for the sole and exclusive benefit of the employees whom the union represents.

But the same cannot be said—and even the National Labor Relations Board has agreed that it cannot be said—concerning the interest of a labor organization in the employer's research programs, the employer's public relations, and the employer's relations with clients, architects, engineers, and subcontractors.

Not only are labor organizations not directly concerned in these matters, but also their interests are often adverse to those of the employer.

For example, it may be in the interest of employers in the construction industry that techniques and machinery be developed which will shift work from one craft to another in order to increase productivity and reduce costs. But the union's contrary aim is to increase its own membership.

Thus, at best, promotion programs, if jointly administered, will be stultified and forced to avoid activities which are favorable to management but which are controversial from the union's viewpoint. At worst, controversial issues will not be avoided, and disharmony will result as the programs become vehicles for jurisdiction in-fighting and the means by which, through using its deadlock power, a union can extract concessions from management in other areas.

We have never heard proponents of this bill, or of the predecessor bills, seriously advance the argument that a union has a legitimate concern in management's research programs, public relations, and relations with clients, architects, engineers, and subcontractors, and that management is somehow incompetent to spend its money in these areas without union assistance. Instead, the proponents usually suggest three arguments, none of which has any merit.

First, the proponents argue that the unions should have the opportunity to jointly administer promotion funds, because the funds are created through the vehicle of the collective bargaining agreement; that is, the labor contract provides that employers shall pay so many cents per hour into the promotion fund.

The argument continues that, since the labor contract provides in the same manner for payments to health and welfare funds, and since health and welfare funds can be jointly administered, so should promotion funds. But the point is not how the money is raised, so much as the purpose for which it is spent.

For example, there is no more reason why management should jointly administer union funds, on the theory that such funds are raised

through the dues checkoff, than there is any reason why the union should jointly administer management funds, on the theory that labor contracts are also the means by which such funds are collected.

The proponents' second argument is that the bill would not make it mandatory for employers to bargain with respect to the joint administration of promotional programs. Such bargaining would merely be permissive. We recognize that permissive bargaining is preferable to mandatory bargaining.

However, those of us experienced in collective bargaining know that the distinction between mandatory and permissive bargaining is not as definitive as has been suggested.

Only in the rarest case is there any real difference between mandatory and permissive bargaining; and when a union desires to exact a concession on a point which is the subject of permissive bargaining, it can do so merely by inflating its demand on a point which is the subject of mandatory bargaining, and then indicate a willingness to relax its position if a concession is made on the permissive subject.

If the bill passes, we may expect a proliferating of promotion funds. Unions which have never heretofore shown any interest in such programs will be impelled by considerations of competition and prestige to negotiate them, and employers will be obliged to contribute money to them.

The result will be an increase in labor-management wrangling in a new area, together with an increase in building costs as tremendous amounts of money are spent on unnecessary and uneconomic publicity and promotion by various industry segments, each offsetting the other. At present this danger does not exist since, in the absence of joint administration, there is no incentive for unions to negotiate such programs.

The third reason generally urged by proponents of this bill is that some promotional funds presently exist which are jointly administered. These funds are operating illegally; and the perennial introduction of this bill has encouraged such funds to continue their illegal operations in the hope that they may someday be legitimatized.

But no one should come to the Congress and say, "We are violating the law, so please change the law."

Instead, those promotion funds which are jointly administered should long ago have brought themselves into line with the law instead of urging that the law be brought into line with them. This could readily have been done if they had simply amended their deeds of trust or like instruments.

In short, the bill has no virtues. Instead, section (a) would encourage unions to bargain for the creation of jointly administered product funds, despite the fact that such funds consist entirely of management money, and the money is expended entirely for management purposes.

Section (b) of the bill is objectionable because it would saddle management with the union's fair share of the costs incurred in adjusting disputes under the labor contract.

Thus, section (b) may predictably increase the number and severity of labor disputes, which are now kept at tolerable levels by the fact that the union must pay its own way. Overall, the bill may well encourage a dramatic increase in the number of union officials, who will be operating, at least indirectly, on management's payroll. It has not

been shown that this is consistent with, much less favorable to, the interest of the public or even of the rank and file of union membership.

Thank you.

Senator YARBOROUGH. Do you have any questions, Senator?

Senator FANNIN. Mr. Taylor, you speak of defining the word "product." If you define that, would it be possible to distinguish in these cases?

Mr. TAYLOR. We think the definition given by two of the sponsors of the House bill during the course of debate on the floor would be adequate and would fairly state what everyone intends to mean by the word "product."

Representative Steiger, and Representative Thompson, who was chairman of the special subcommittee, stated as follows:

" 'Product' as used in the bill refers, for example, to tangible materials or substances physically incorporated in the buildings or other facilities, or the application of such material as in painting or decorating. It does not refer to the activities of the so-called industry advancement programs."

Senator FANNIN. But you think this legislation, if it is approved, that the word "product" should be specifically defined in the bill itself?

Mr. TAYLOR. Yes, sir. I am afraid that the definition as we now have it, plus the legislative history, in spite of all that, some union official might misconstrue the meaning of the word "product," and it might therefore pose some problems.

Senator FANNIN. Thank you.

No further questions.

Senator YARBOROUGH. I have a comment here that I will make at this time, Mr. Taylor.

This comes from the House report on the bill, recommending the passage to the House, and the section-by-section analysis, and I feel it is important at this point, and I feel it illustrates the value of the presentation of these points by all of you gentlemen. I think all the presentations made are valuable to us in working out the bill.

Here is what the House said. I am reading from the fifth paragraph, page 5, of the House report:

> In relation to a joint industry promotional program, such payments as are intended to be used for defraying the costs and expenses of such a program are to be made to a separate trust which provides that the funds held therein cannot be used for any purpose other than for product, and product application research and development, product and product application and market development, promotion of product and product application with architects, engineers, and Government contracting officials, product and product application in public relations, publication of a product and product application of technical information and data. No labor organization or employer shall be required to bargain on the establishment of any such program and the refusal to do so shall not constitute an unfair labor practice.

Will that language alleviate some of the objections you have to the bill? Will that alleviate some of these dangers that you envisage in the bill if that language were incorporated in the Senate report, if we report the bill out?

Mr. TAYLOR. No, sir; I don't believe that it would allay my fears, no.

Senator YARBOROUGH. Thank you.

Senator Fannin?

Senator FANNIN. No further questions.

Senator YARBOROUGH. I want to say that we are considering all the positions and will in the executive hearings of the Labor Subcommittee and in the full committee.

Thank you very much.

This completes the oral hearings on this bill, and the record will be left open until Friday, July 19, 1968. Anyone having additional material they desire to file, additional letters or statements of position, we will be glad to have them up to that time.

I order the record closed as of July 19, 1968, and direct the staff to work with the printer to have this record printed as rapidly as possible.

I want to thank you all, you gentlemen, this morning for your cooperation, for the succinctness and clarity of your statements. These statements—I have attended many hearings in my years in the Senate. I think this is one of the best groups, where we have found out exactly where you stand in a few words as we had here.

We had eight different major witnesses, every one representing a major interest, and I expect you will agree with me, Senator Fannin, that they have been tremendously helpful in getting their positions very strongly stated to us.

Senator FANNIN. Yes, I agree.

Senator YARBOROUGH. Thank you all for your cooperation, and I congratulate you and the staffs and attorneys who worked with you for boiling it down to those few pages.

Thank you very much, gentlemen.

At this point in the hearing record I order printed prepared statements of those unable to attend the hearing and other pertinent material subsequently supplied for the record.

(The material referred to follows:)

97-387 O - 68 - 5

LOCAL NO. 2 OF the OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION, etc., et al., Appellants,

v.

PARAMOUNT PLASTERING, INC., et al., Appellees.

No. 17572.

United States Court of Appeals
Ninth Circuit.
Nov. 7, 1962.

Action for injunctive and other relief. The United States District Court for the Southern District of California, Central Division, Leon R. Yankwich, J., 195 F.Supp. 287, rendered the judgment challenged on appeal. The Court of Appeals, Barnes, Circuit Judge, held that only purposes for which jointly administered trust funds could be organized were those contained in exceptions to Labor Management Relations Act section proscribing payments by employers to representatives of employees.

Affirmed.

1. Declaratory Judgment ⇐65

Controversy, as to whether jointly administered trust funds could be organized for purposes other than those included within statutory exceptions when used to implement collective bargaining agreement, was real and substantial one, admitting of specific relief through decree of conclusive character and not merely an opinion advising what law would be on hypothetical state of facts. Labor Management Relations Act of 1947, § 302(e), 29 U.S.C.A. § 186(e); 28 U.S.C.A. §§ 1291, 2201, 2202.

2. Labor Relations ⇐131

Congress intended, by exceptions in Labor Management Relations Act subdivision, to limit type of funds which could be jointly administered by labor and management. Labor Management Relations Act of 1947, § 302(a–c) as amended 29 U.S.C.A. § 186(a–c).

3. Labor Relations ⇐131

Trust or corporation became a "representative" of employees, within meaning of statute proscribing payments by employers to representatives of employees, where one-half of trustees of trust and one-half of directors of corporation, which were created for inter alia purpose of promoting economic position of both labor and management, were appointed by labor organization. Labor Management Relations Act of 1947, § 302(a–c) as amended 29 U.S.C.A. § 186 (a–c).

See publication Words and Phrases for other judicial constructions and definitions.

4. Labor Relations ⇐83

Even though construed as permitting jointly administered trust funds to be organized only for purposes recognized in statutory exceptions, statute proscribing payments by employers to representatives of employees was not void for vagueness. Labor Management Relations Act of 1947, § 302(a–c) as amended 29 U.S.C.A. § 186(a–c).

5. Declaratory Judgment ⇐274

State was only power that could intervene to determine truth of allegations, that non-profit corporation was engaging in trust business without authorization, and to take appropriate action, by quo warranto or other authorized proceedings, and federal courts could not usurp that state function under guise of a declaration of rights.

Brundage, Neyhart, Grodin & Miller, Eugene Miller and Charles Hackler, Los Angeles, Cal., for appellants Local No. 2 etc.

Mantalica, Barclay & Teegarden, and Lewis C. Teegarden, Los Angeles, Cal., for appellants Employers & Southern California Plastering Institute Inc.

Earl Klein, Beverly Hills, Cal., for appellees.

Axel W. Oxholm and Betty J. Southard, Washington, D. C., amicus curiae National Bureau for Lathing & Plastering, Inc

Bert E. Kragen, San Francisco, Cal., and Ziskind & Ross, Los Angeles, Cal., amici curiae Painting & Decorating Contractors of California, Inc.

Ziskind & Ross, Los Angeles, Cal., amici curiae Painting & Decorating Contractors Association of Los Angeles, Inc.

Alexander H. Schullman, Los Angeles, Cal., amici curiae District Council No. 36 of the Brotherhood of Painters, Decorators & Paperhangers of America.

Ziskind & Ross, and Alexander H. Schullman, Los Angeles, Cal., amici curiae Los Angeles County Painting & Decorating Joint Committee, Inc.

Before STEPHENS, BARNES and JERTBERG, Circuit Judges.

BARNES, Circuit Judge.

This is an action for declaratory and injunctive relief under the provisions of Section 302 of the Labor Management Relations Act, as amended (hereinafter referred to as the LMRA). Jurisdiction existed below as to the injunctive relief sought (Subdivision (e) of Section 302, 29 U.S.C. § 186(e)); and on appeal lies here (28 U.S.C. § 1291).

[1] The declaratory relief sought rests on the provisions of 28 U.S.C. §§ 2201 and 2202, so long as jurisdiction is conferred by 29 U.S.C. § 186(e). We consider and hold this controversy a real and substantial controversy admitting of specific relief through a decree of conclusive character, and not an opinion advising what the law would be on a hypothetical state of facts. Samuel Goldwyn, Inc. v. United Artists Corp., 3 Cir., 1940, 113 F.2d 703.

The action originally was one for an injunction only, filed by certain employers engaged in the lathing and plastering business in the State of California. These plaintiff employers had signed, in June 1959, identical collective bargaining agreements with defendant unions. Each agreed to abide by the terms of an agreement made on January 2, 1958, between defendant The Contracting Plasterer's Association of Southern California, Inc., and the defendant unions; and any new agreement between said last named parties.

Thereafter The Contracting Plasterer's Association of Southern California, Inc. and the defendant unions signed a new collective bargaining agreement. Some plaintiffs signed the new agreement.

The new agreement contained the following provisions, in pertinent part, in Article VI:

"B. Southern California Plastering Institute Industry Program

"1. The Trust Agreement of the Southern California Plastering Institute Industry Program, as amended and modified, is a part hereof as though fully set forth herein.

"2. The Contractors covered by this Agreement, in addition to compliance with all other provisions contained herein, shall pay to the Southern California Plastering Institute Industry Program, or its order, the sum of Four and Three-Fourths Cents (4¾¢) for each hour a man is to receive pay pursuant to the terms of this Contract.

"3. The Southern California Plastering Institute Industry Program may require payments to be made directly to it or may designate by written order an agent for deposit or collection. In the event no such agent or depository is named, said sums shall be paid to the Southern California Plastering Institute Trust for the benefit of the Southern California Plastering Institute Industry Program.

"C. Southern California Plastering Institute Trust

"1. The Southern California Plastering Institute Trust, herein referred to as the Institute Trust, shall continue in existence for the purpose of collecting such sums as are due the various Trusts which are part of this Agreement, and to pay over to said Trust such sums as are collected. The Trust Agreement of the Southern California Plastering Institute Trust, as amended and modified, is

made a part hereof as though fully set forth herein.

* * * * * *

"E. Labor-Management Relations Trust

"1. The Trust Agreement of the Labor-Management Relations Trust is made a part hereof as though fully set forth herein.

"2. The Contractors covered by this Agreement, in addition to compliance with all other provisions contained herein, shall pay to the Labor-Management Relations Trust, or its order, the sum of One-Fourth Cent (¼¢) for each hour a man is to receive pay.

"3. The Labor-Management Relations Trust may require payments to be made directly to it or may designate by written order an agent for deposit or collection. In the event no such agent or depository is named, said sums shall be paid to the Southern California Plastering Institute Trust for the benefit of the Labor-Management Relations Trust." [1]

Plaintiffs below urged that the three Trust Agreements mentioned (B, C and E, supra) were void, invalid and violative of the terms of the Labor Relations Act of 1947, as amended in 1959, in that: (1) they provided for payments by employers to representatives of employees of plaintiffs; (2) that moneys so paid were used for purposes other than those permitted under subsection (c) of § 302 of the LMRA.

As amended in 1959, 29 U.S.C. § 186(c)(5)[2] which proscribed payments, contained an exemption "with respect to money * * * paid to a trust fund established * * * for the sole and exclusive benefit of the employees * * *, and their families and dependents * * *: *provided*,"

"That (A) such payments are held in trust * * * for medical or hospital care, pensions * * *, [workmen's] compensation * * *, or insurance * * * or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; * * *."

Section 302(c)(6) provides a second exemption—

"* * * with respect to money * * * paid by any employer to a trust fund * * * for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs."

As to both exemption (5) and (6), supra, clause (B) of § 302(c)(5) was specifically made applicable, requiring that "written agreements" were essential, as well as "equal" representation between employers and employees in the administration of such fund, with an impartial umpire to be agreed upon in the event of a deadlock; for annual audits, and for open inspection of the accounts.

Subsequent to the filing of the original complaint, a supplemental complaint was filed. It added a second cause of action for declaratory relief seeking to hold invalid the trust which had evolved, since the filing of the original complaint, by reason of the transfer to the trustee (a California non-profit corporation, The Southern California Plastering Institute, Inc.) of all the functions of the three trusts hereinbefore described.

According to the allegations of the supplemental complaint, the articles of incorporation did not designate the members of the corporation but the By-laws, adopted on February 13, 1961, designated eight locals of various unions and two corporations representing employers as members. The voting rights of the members are divided as follows: Local 2 of the Operative Plasterers & Cement Masons International Association, A. F. L., 3 directors; Local 194 of the same union, 1 director; Local 400, 1 director; Local 489, 2 directors; Local 343, 1 director; Local

1. Article VI also contained paragraph A, relating to payments into an insurance program; paragraph D, relating to payments into a pension trust fund; and paragraph F, relating to a vacation plan. Such funds are not here involved.

2. Section 302(c)(5) of the LMRA.

739, 2 directors; Local 838, 1 director; Local 42 of Wood, Wire and Metal Lathers International Union, A. F. L., 1 director; Contracting Plasterers Association of Southern California, 11 directors; Lathing and Metal Furring Contractors Association of California, Inc., 1 director.

The answers of the defendants to the complaint and the supplemental complaint admitted the main facts, the existence of the original trust agreements and the assumption of its functions by the corporation in the collective bargaining agreement between the employers and the unions. The denials related merely to the validity and legality of the transaction. The answers to the supplemental complaint asserted that "the Southern California Plastering Institute, Inc. was incorporated for the purposes set forth in said Articles of Incorporation and for the purpose of creating an entity whose acts, conduct and operations would not lie within the proscriptions of any of the sections of the Labor-Management Relations Act." Also that the original defendants: "are not now collecting monies from plaintiffs or other contractors; that the defendant Southern California Plastering, Inc. is the only defendant now authorized to collect money from plaintiffs or other contractors."

Union appellants state three questions are here involved:

1. Did Congress intend, by the exceptions in subdivision (c) of § 302 of the LMRA to limit the type of funds which could be jointly administered by labor and management?

2. Does a trust or corporation become a "representative" of employees, within the meaning of § 302 merely because one-half of the trustees of the trust and one-half of the directors of the corporation are appointed by a labor organization where the purposes of said trusts or corporation are limited to promoting the use of lath and plaster in the construction industry?

3. Are payments by employers to such trusts and corporations within the prohibition of (a) and (b) of § 302?

Appellants Employers and Southern California Plastering Institute agree that the first two questions hereinabove mentioned are those here involved. (An affirmative answer to the third question raised above necessarily follows if questions one and two are answered affirmatively.)

Amicus Curiae National Bureau For Lathing and Plastering, Inc., a corporation, urges the same first two questions, and adds a fourth: "Whether the District Court's interpretation of Section 302, if allowed to stand, results in a denial of due process, in that the interpretation renders the section void for vagueness."

An Amici Curiae brief is also before us from Painting and Decorating Contractors of California, Inc., Painting and Decorating Contractors Association of Los Angeles, Inc., District Council No. 36 of the Brotherhood of Painters, Decorators & Paperhangers of America, Los Angeles County Painting and Decorating Joint Committee, Inc. It urges that the district court's application of § 302 to the facts of this case is unconstitutional; inconsistent with the remainder of the LMRA; and contrary to the express intent of Congress, and that the Southern California Plastering Institute is not a "representative of employees."

Appellees agree as to the first question raised by appellants, treat the second question in two separate arguments (as to the "joint trusts" and the "corporation"), and raise a fifth issue: "Should a corporate entity set up for the express purpose of evading the provisions of Section 302 be disregarded?"

We need not reach the fifth question raised by appellees, because in our view the earlier questions raised control the case. We therefore accept the union appellants' statement of the questions involved, plus the due process question.

[2–4] We answer the first three questions so raised affirmatively, and the fourth negatively. Congress did intend to limit the type of funds which could be jointly administered; both the trusts and the corporation created here are "rep-

resentatives of employees;" the payments sought to be halted by plaintiffs are within the prohibition of § 302(a) and (b) of the Act, and not within the exemptions contained in § 302(c); and the district court's interpretation of § 302 does not render the section void for vagueness, nor does it result in a denial of due process.

Congress, in passing the 1959 amendments to the LMRA, acted, as appellees state, "very cautiously." Let us assume, arguendo, that the trusts originally created are not here involved, by mootness. We then have a corporation, Southern California Plastering Institute, Inc., organized, as the district court described it:

"* * * as a general non-profit corporation under the non-profit corporation law of the State of California. California Corporations Code, § 9000 et seq.

"The objects stated in the Articles of Incorporation were these:

"(a) To promote industry betterment and industry public relations for the lathing and plastering industry.

"(b) To encourage harmony between labor and management within the lathing and plastering industry.

"(c) To carry out appropriate programs of public relations for the general welfare and advancement of the lathing and plastering industry.

"(d) To gather and distribute facts, data and other information relative to the use and benefits of lath and plaster in general for the use and benefit of its members, the lathing and plastering industry as a whole and for public dissemination.

"(e) To engage generally in any causes or objects similar to the foregoing in order to promote the lathing and plastering industry.

"(f) To adopt By-laws prescribing the duties of the officers and agents of the corporation, the detail of its organization, the time and manner of its meetings, and any and all detail incident to its meetings and conduct and management of its organization.

"(g) To do any and all things which a natural person may do necessary or desirable for the general purpose for which the corporation is organized.

"These objects are well within the purposes authorized by California law for non-profit corporations. * * *"

[5] The district court then disposed of the question raised below by appellees as to whether the Southern California Plastering Institute, Inc. "[was] engaging in the trust business without authorization." Such a question, ruled the district court, is one to be ruled upon only by the State of California.

"[T]he State is the only power that can intervene to determine the truth of these allegations and take appropriate action, either by quo warranto or other authorized proceedings. California Financial Code, §§ 3111–3132. We cannot usurp that State function under the guise of a declaration of rights."

We agree.

We next compare the laudable purpose of the non-profit corporation with the restrictions contained in the LMRA as to what funds can be set up and used. Did the original three trust funds and the later corporation perform functions forbidden by the Act? We quote with approval from Judge Yankwich's decision below:

"The clause [§ 302(c) (5) and (6)] is an exception to the general provisions of the section, the aim of which is to proscribe the payment by employers and receipt by employee representatives in industries affecting commerce of bribes, gifts and gratuities, and to control monies paid into union trust funds as 'war chests' or for other purposes.

"After the adoption of the statute (Taft-Hartley) so many variant interpretations, allegedly drawn from its history, were asserted that Judge

Learned Hand in a dissent in a noted case, United States v. Ryan, 2 Cir., 1955, 225 F.2d 417, complained that he found 'it impossible to extract any safe principles'. At page 427. The Supreme Court * * * granted certiorari in that case and its decision has become the guide to the meaning of the section. Especially insofar as it relates to the prohibition against payment to 'representatives' of the union. The entire clause as it stood before the 1959 amendment is printed in the margin [note].

"The important part of the Ryan decision, so far as it concerns this case, is contained in the following statement as to the scope of the exceptions: 'Nor can it be contended that in this legislation Congress was aiming solely at the welfare fund problem. Such a suggestion is supported neither by the legislative history nor the structure of the section. The arrangement of § 302 is such that the only reference to welfare funds is contained in § 302(c) (5). If Congress intended to deal with that problem alone, it could have done so directly, without writing a broad prohibition in subsection (a) and (b) *and five specific exceptions thereto in subsection (c), only the last of which covers welfare funds.* As the statute reads, it appears to be a criminal provision, malum prohibitum, which outlaws all payments, with stated exceptions, between employer and representative.' United States v. Ryan, supra, 350 U.S. 299, at page 305, 76 S.Ct. 400, at page 404, 100 L.Ed. 335. (Emphasis added)

"As I read this extract it means just this, that subsection 5 is a declaration of the Congress that only welfare funds *coming within one* of *the five (now six) exceptions* are exempt from the sweep of congressional condemnation. Subsequent decisions of the Supreme Court confirm this view. [Emphasis by Judge Yankwich.]

"In National Labor Relations Board v. Cabot Carbon Co., 1959, 360 U.S. 203, 79 S.Ct. 1015, 3 L.Ed.2d 1175, the high Court upheld the ruling of the National Labor Relations Board to the effect that a 'committee' of employees which deal with employers was forbidden by the Act, despite the insistence that 'to hold these employee committees to be labor organizations would *prevent employers and employees from discussing matters of mutual interest concerning the employment relationship.*' 360 U.S. at page 218, 79 S.Ct. at page 1024. (Emphasis added) To this the Court answered: 'The principal distinction lies in the unfettered power of the former to insist upon its requests. [National] Labor Relations Board v. Jas. H. Matthews & Co., 3 Cir., 156 F.2d 706, 708. Whether those proposals and requests by the Committees, and respondents' consideration of and action upon them, do or do not constitute "the usual concept of collective bargaining" (256 F.2d [281], at page 285), we think that those activities establish that the Committees were "dealing with" respondents, with respect to those subjects, within the meaning of § 2(5) [of the National Labor Relations Act].' 360 U.S. at page 214, 79 S.Ct. at page 1022.

"In Arroyo v. United States, 1959, 359 U.S. 419, 79 S.Ct. 864, 3 L.Ed.2d 915, the majority of the court held that in enacting the section the Congress were concerned with corruption of collective bargaining through bribery of employees representatives by employers and 'with the possible abuse by union officers of the power which they might achieve *if welfare funds were left to their sole control.*' 359 U.S. at page 426, 79 S.Ct. at page 868. (Emphasis added)

"I take these statements to mean that the *only* purposes for which joint administrative committees of employers and employees, *working with-*

in the framework of the Labor Management Relations Act, [emphasis by Judge Yankwich] could act were those coming within the exceptions. This interpretation is confirmed by the added statement contained in the opinion: 'Congress believed that if welfare funds were established which did not define with specificity the benefits payable thereunder, a substantial danger existed that such funds might be employed to perpetrate control of union officers, for political purposes, or even for personal gain. See 92 Cong.Rec. 4892–4894, 4899, 5181, 5345–5346; S.Rep. No. 105, 80th Cong., 1st Sess., at 52; 93 Cong.Rec. 4678, 4746–4747. To remove these dangers, specific standards were established to assure *that welfare funds would be established only for purposes which Congress considered proper* and expended only for the purposes for which they were established. See Cox, Some Aspects of the Labor Management Relations Act, 1947, 61 Harv.L.Rev. 274, 290. *Continuing compliance with these standards in the administration of welfare funds was made explicitly enforceable in federal district courts by civil proceedings under § 302(e).*' 359 U.S. at pages 426–427, 79 S.Ct. at page 868. (Emphasis added) [note]

"The conclusion is reenforced by the statement in a later case, Lewis v. Benedict Coal Corp., 1960, 361 U.S. 459, 80 S.Ct. 489, 4 L.Ed.2d 442, which reads: 'The provisions of the collective bargaining agreement creating the fund included the express provision that "this Fund is an irrevocable trust created pursuant to Section 302(c) of the 'Labor-Management Relations Act, 1947.'" Another provision specifies that the purposes of the fund shall be all purposes *"provided for or permitted in Section 302(c)."* In this way the agreement plainly declares what the statute requires, namely, that the fund shall be used "for the sole and exclusive benefit" of the employees, their families and dependents.' 361 U.S. at pages 464–465, 80 S.Ct. at page 493.

"All cases interpreting this clause which have arisen since the decision in Ryan, supra, must be read in the light of its declarations and those contained in subsequent cases as to the scope of the limitations on the nature of trust funds. So read they warrant the conclusion that *the only* trust funds permitted are those in the six categories now contained within the exceptions. [Emphasis by Judge Yankwich.]

"In the light of this, the contention of the defendants that the clause under discussion does not prohibit joint administration of trust funds, if they are established for other purposes than dealing with the employers 'concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work' (29 U.S.C.A., § 152(5)) cannot be sustained."

Judge Yankwich then differentiated Conditioned Air & Refrigeration Co. v. Plumbing & Pipe Fitting Labor-Management Relations Trusts, D.C.Cal.1956, 159 F.Supp. 887, affirmed, 9 Cir., 253 F.2d 427, and Sheet Metal Contractors Association of San Francisco v. Sheet Metal Workers International Association, 9 Cir., 1957, 248 F.2d 307. He cited Copra v. Suro, 1 Cir., 1956, 236 F.2d 107, and Employing Plasterers' Association of Chicago v. Journeymen Plasterers' Protective & Benevolent Society of Chicago, 7 Cir., 1960, 279 F.2d 92, as supporting his conclusions. He quoted from Mechanical Contractors Association of Philadelphia v. Local Union No. 420, 3 Cir., 1959, 265 F.2d 607:

" 'Thus, the essence of Section 302 may be summarized as follows: No fund derived from employer contributions may be administered by persons designated by a union *unless the fund meets the standards set forth in Section 302(c) (5). Any employee-designee administering such fund not*

meeting the requirements of Section 302(c) (5) is a "representative" within the meaning of Subsections 302(a) and (b). As was stated in United States v. Ryan, 350 U.S. at page 305, 76 S.Ct. at page 404, "if 'representative' means only the 'exclusive bargaining representative,' the explicit limitations on welfare funds in § 302(c) (5) may be easily evaded. Payments made directly to union officials, *or to other individuals as trustees*, would apparently be excluded from § 302. Thus, a narrow construction would frustrate the primary intent of Congress." (Emphasis supplied.).'"

and,

"'As was stated by Judge Hand in his dissenting opinion in United States v. Ryan, 2 Cir., 1955, 225 F.2d 417, 425, subsequently adopted by the Supreme Court, "Since * * * the purpose of subsection (c) is to state exceptions to the preceding subsections (a) and (b), the payments that subsection (c) covers would fall within (a) and (b) except for the exception."' * * * (Emphasis added)"

The able trial judge then observed that the restrictive interpretation of § 302(c) (5) was aided by the addition of § 302(c) (6) in 1959 (73 Stat. 537) covering pooled vacations, etc. Costs of apprenticeship training had been held a lawful purpose in South Louisiana Chapter, Inc. v. Local Union No. 130 of the Int. Brotherhood of Electrical Workers, E.D.La.1959, 177 F.Supp. 432; that "Congress * * * has been required to spell out its intent in order that courts will not strike down, as illegal, labor and management-agreements, such as the one in suit, which promote harmony in an industry and redound to the benefit of the employer and employee alike."

But until Congress has spelled out such an intent, with respect to the activities specifically exempted, it is not the function of the courts to create additional exemptions. Such would be the result of a single court's belief as to what will or will not "promote harmony" and "redound to the benefit of the employer and employee alike." This court can believe that Congress might well have, or even *should* have, provided additional exemptions, permitting the setting up of laudable trusts that are vital to the preservation of the economic position of both labor and management, yet this court cannot be the arbiter of what such exemptions should be. That is the duty and responsibility of Congress. As Judge Yankwich ruled: Congress proscribed certain practices and permitted others in labor-management agreements, and permitted "joint trust funds for certain purposes only."

It is perfectly true, as the union contends, that there is not the slightest hint in the record that any of the trust funds here involved "has resulted in bribes, kickbacks, slush funds, racketeering or union war chests; nor do [plaintiffs] assert that this fund is under the sole control of the union." We accept that statement, with gratitude and happiness that it is true. But that does not prove that the trust fund is "not within the scope of the evil which Congress intended to eliminate." We agree with appellees and Employing Plasterers' Association of Chicago v. Journeyman Plasterers' Protective & Benevolent Society of Chicago, supra, wherein the court stated:

"Section 302 is aimed primarily at the *prevention* of possible abuse and not at providing a remedy for abuse actually perpetrated. * * * Where it is established that payment and acceptance is between employer and 'representatives' of employees, the issue in a suit for injunction becomes the legality of the welfare funds *as measured by the statutory standards* of administration." (279 F.2d at 97.) (Emphasis added.)

Gibas v. United States, 7 Cir., 1962, 300 F.2d 836, 840.

Appellants urge that this "good purpose" of the funds so paid was but of *indirect* benefit to the employees, and not to their direct benefit. We find in the

statute no language creating or recognizing such a distinction.

Judge Yankwich did not find it necessary to reach the differences between the powers and voting rights of the trustees of the original trusts, and those of the directors of the non-profit corporation. This because, in his opinion, the *purposes*, both of the trusts and the corporation, violated the collective bargaining agreement they were to implement.

Are these trust funds, and more particularly, is this non-profit corporation, a "representative" of the employees of a labor organization? Appellants admit that the trade promotion funds herein involved are not within any of the exceptions of subsection (c) of § 302. But they earnestly urge that neither are such funds within the proscription of § 302(a) and (b) because the payments are not made to a "representative of employees."

We agree with appellants that the factual situation here is not precisely comparable to that in the Sheet Metal Contractors Association case, supra, where the trustee, a Joint-Industry Board, aided disputes between labor and management arising from a collective bargaining agreement, set up arbitration committees, a forum to discuss the problems of the industry, and "cooperated" with "public bodies" with respect to legislation.

The Board in the Sheet Metal case, supra, had the authority and power "to study and correct improper working conditions and shall decide all controversies or disputes arising under this agreement." This court concluded: "The purposes of the Board, indicate that it existed for the purpose at least in part of dealing with employers concerning grievances, etc." Our opinion presumed that "any dispute" between the parties to the agreement included "grievances," and concluded that the Joint-Industry Board satisfies the definition of "labor organization" contained in the original Wagner Act (29 U.S.C. § 152(5)).[3] Here there was undisputed employee participation in a plan. If it existed, even in small part, for the purpose of dealing with employers concerning grievances or disputes, or conditions of work, it was then a "labor organization" within the 29 U.S.C. § 152(5) definition, and could be a "representative" within the 29 U.S.C. § 152(4) definition.[4]

We now turn to the purposes of the corporation, and the antecedent trusts. Plaintiffs' Exhibit 2, "Agreements and Declarations of Trust," indicates that six separate agreements were signed by the same parties on behalf of labor, and the same parties on behalf of management.

First: There was the "Southern California Plastering Institute Trust." It was the collecting agency for (a) the Insurance Trust; (b) the Industry Program; (c) the Pension Trust; and (d) the Labor-Management Relations Trust.

There was also (e) a Vacation Plan with a Vacation Fund Account to which amounts were payable under the collective bargaining agreements. The trustees of Southern California Plastering Institute acted as trustees for this fund.

As quoted above, the only trusts herein attacked were the Industry Program, the Institute Trust, and the Labor-Management Relations Trust. No question is raised as to the Vacation Plan, the Insurance Trust or the Pension Trust.

The agreements setting up the respective trusts were all made a part of the collective bargaining agreement, "as though set forth in full." The Institute

3. Which reads: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee *or plan*, in which employees participate and which exists for the purpose, in whole *or in part*, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of work." (Emphasis added.)

4. Which reads: "The term 'representatives' includes *any* individual or labor organization." (Emphasis added.)

Trust had no purpose other than to act as a conduit for the moneys collected on their way to the other trusts.

Second: We find the Industry Program trust had certain stated purposes, functions and powers.[5]

5. "ARTICLE V

"FUNCTIONS AND POWERS

"A. The trustees shall have full power to select and carry out as they deem appropriate a program of public relations for the general welfare and advancement of the plastering industry, and shall assume existing contracts and liabilities of the Industry Program as previously carried on by the Southern California Plastering Institute.

"B. The Industry Program shall continue to pay to the National Bureau of Lathing and Plastering, Washington, D. C. so long as said organization qualifies as a business league under the provisions of Section 501(c) (6) of Internal Revenue Code of 1954, the sum of ½¢ of each 4¾¢ received by the Industry Program for the purpose of improvement of business conditions of the lathing and plastering industry, but in no event shall this sum exceed $400 per week.

"C. The Industry Trust shall have the right and power to receive payments from sources other than those provided in this contract for the purposes of trade promotion and advertising.

"D. The Southern California Plastering Institute Industry Program may require payments to be made directly to it or may designate by written order an agent for deposit or collection. In the event no such agent or depository is named, said sums shall be paid to the Southern California Plastering Institute Trust for the benefit of the Industry Program.

"E. The trustees of the Industry Program are hereby empowered to delegate to the Insurance Program the maintenance and operation of the office, personnel and records of the Industry Program. In such event the Industry Program shall pay that portion of the expense of said operation which is fair and reasonably attributable to the Industry Program in the opinion of the trustees.

"F. The trustees shall have the power to do all things necessary to collect and receive funds due to the Industry Program by the terms of the labor agreement, addendum and modifications thereto, including the right to sue to recover said payments and costs of suit.

"G. Without prejudice to the rights of the parties under the collective bargaining agreements with respect to their enforcement, The Board of Trustees shall have the power to enforce the payment of contributions to the trust by individual employers under the terms of the collective bargaining agreements or under any other promise to make such payments in any particular case or cases only where such action is specifically authorized by a resolution of the Board. If any individual employer defaults in the making of such payments and if the Board consults legal counsel with respect thereto, or files any suit or claim with respect thereto, there shall be added to the obligation of the employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred by the Board in connection with such default.

"H. The Board of Trustees shall procure fidelity bonds for each trustee or other person authorized to handle, deal with, or draw upon the moneys in the trust for any purpose whatsoever, said bonds to be in such reasonable amount and to be obtained from such source as the Board shall determine.

"I. The Board of Trustees shall have power to authorize one person to sign checks drawn on the trust in amounts not exceeding $500. Except as covered by such authority, all checks, drafts, vouchers or other withdrawals, of money from the trust shall be authorized in writing or countersigned by at least one trustee who is an employer representative and one trustee who is an employee representative.

"J. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the trust and all business relations thereto. The Board may require the employers, any individual employer, the union, and any individual employee to submit to it any information, data, report or documents reasonably relevant and suitable for the purposes of such administration. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the board for any such information, data, report or documents.

"K. The trustees shall cause to be made an annual audit of the trust by a C.P.A. and shall make available to all interested persons a statement of the results of such audit at the principal office of the trust, and at such other places from time to time designated by the trustees.

"L. No contractor actively engaged in the plastering business, no union official or business agent of the contracting unions, and no trustee of the trust shall be employed by said trust.

The purpose was to promote "industry betterment and industry public relations." The trustees were equally divided between the contractors and the union. (Art. III, ¶ B.) Under Article V, ¶ A, the trustees had full power to carry out, as they deemed appropriate, a program of public relations for the general welfare and advancement of the plastering industry. Under Article V, ¶ M, the trustees could employ counsel, and executive, administrative, clerical and secretarial help, and incur and pay any other expense reasonably incidental to the administration of the trust.

Under Article V, ¶ G, the trustees had the power "to enforce the payment of contributions to the trust by individual employers under the terms of the collective bargaining agreements or under any other promise to make such payments." Under Article V, ¶ J, the trustees had the power to require employers to submit any "information, data, report or documents reasonably relevant" to the administration of the trust.

Third: Under the Labor-Management Relations Trust created by the collective bargaining agreement, the functions and powers [6] of the six trustees (three ap-

"M. The Board of Trustees shall have power:

"1. To establish and accumulate such reserve funds as may be necessary to provide for administration expenses and other proper obligations of the trust.

"2. To employ such executive, administrative, clerical, secretarial and legal personnel and other employees and assistants as may be necessary in connection with the administration of the trust, and to pay or cause to be paid, out of the trust, the compensation and expenses of such personnel and assistants, the cost of office space, furnishings and supplies and other essentials required in such administration.

"3. To consult with and secure the advice of legal counsel on any question of fact or law arising in connection with the administration of the trust, including, at the request of either the employer trustees or the union trustees, advice on any question from legal counsel selected by the employer trustees and legal counsel selected by the union trustees who shall be directed to confer with each other and, if possible, submit a joint opinion to the Board, and in like manner to employ legal counsel or joint legal counsel in connection with suits or claims by or against the Board of the trust with respect to the trust, and to pay the reasonable costs of such legal services from the trust.

"4. To incur and pay out of the trust any other expense reasonably incidental to the establishment and administration of the trust. To carry on all its functions under the name of Southern California Plastering Institute Industry Program and to carry any and all bank accounts in a trust fund under that name.

"5. To invest and reinvest such portion of the trust as is not required for current expenditures and charges in such securities as are legal for the investment of trust funds under the laws of the State of California.

"6. To adopt rules and regulations for the administration of the trust which are not inconsistent with the purpose and intent of this agreement."

6. "ARTICLE IV
"FUNCTIONS AND POWERS

"A. It shall be the function of the Trustees, and the Trustees shall have the power to expend the funds of the Trust for the common interest of labor-management relations of the parties to the Collective Bargaining Agreement, for the printing of necessary forms and documents required to facilitate the said Agreement, the printing of said Agreement and any amendments and addendum thereto, for secretarial or reporter's services required for meetings of labor-management negotiating committees, for legal services and other costs incurred by management-employed counsel, such as consultation, attendance at meetings, drafting of documents and litigation related to matters pertaining to said Agreement, and for other incidental costs and expenses of labor-management relations. None of the Trust Fund shall be used for any purpose contrary to or inimical to the Union or to the Contractor parties to the Collective Bargaining Agreement.

"B. The Labor Relations Trust may require payments to be made directly to it or may designate by written order an agent for deposit or collection. In the event no such agent or depository is named, said sums shall be paid to the Southern California Plastering Institute Trust for the benefit of the Labor Relations Trust.

"C. The Trustees shall have the power to do all things necessary to collect and receive funds due to the Labor Relations

pointed by the unions, and three by the contractors) were "to expend the funds * * * for the common interest of labor-management relations * * * for secretarial or reporter's services required for meetings of labor-manage-

Trust by the terms of the Labor Agreement, addendum and modifications thereto, including the right to sue to recover said payments and costs of suit.

"D. Without prejudice to the rights of the parties under the Collective Bargaining Agreements with respect to their enforcement, the Board of Trustees shall have the power to enforce the payment of contributions to the Trust by individual employers under the terms of the Collective Bargaining Agreements or under any other promise to make such payments in any particular case or cases only where such action is specifically authorized by a resolution of the Board. If any individual employer defaults in the making of such payments and if the Board consults legal counsel with respect thereto, or files any suit or claim with respect thereto, there shall be added to the obligation of the employer who is in default, reasonable attorneys' fees, court costs and all other reasonable expenses incurred by the Board in connection with such default.

"E. The Board of Trustees shall procure fidelity bonds for each Trustee or other person authorized to handle, deal with, or draw upon the moneys in the Trust for any purpose whatsoever, said bonds to be in such reasonable amount and to be obtained from such source as the Board shall determine.

"F. The Board of Trustees shall have power to authorize one person to sign checks drawn on the Trust in amounts not exceeding $500. Except as covered by such authority, all checks, drafts, vouchers or other withdrawals of money from the Trust shall be authorized in writing or countersigned by at least one Trustee who is an employer representative and one Trustee who is an employee representative.

"G. The Board of Trustees shall maintain suitable and adequate records of and for the administration of the Trust and all business relations thereto. The Board may require the Employers, any individual Employer, the Union, and any individual employee to submit to it any information, data, report or documents reasonably relevant and suitable for the purposes of such administration. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Board for any such information, data, report or documents.

"H. The Trustees shall cause to be made an annual audit of the Trust by a C.P.A. and shall make available to all interested persons a statement of the results of such audit at the principal office of the Trust, and at such other places from time to time designated by the Trustees.

"I. No contractor actively engaged in the plastering business, no union official or business agent of the contracting unions, and no Trustee of the Trust shall be employed by said Trust.

"J. The Board of Trustees shall have power:

"1. To establish and accumulate such reserve funds as may be necessary to provide for administration expenses and other proper obligations of the Trust.

"2. To employ such executive, administrative, clerical, secretarial and legal personnel and other employees and assistants as may be necessary in connection with the administration of the Trust, and to pay or cause to be paid, out of the Trust, the compensation and expenses of such personnel and assistants, the cost of office space, furnishings and supplies and other essentials required in such administration.

"3. To consult with and secure the advice of legal counsel on any question of fact or law arising in connection with the administration of the Trust, including, at the request of either the Employer Trustees or the Union Trustees, advice on any question from legal counsel selected by the Employer Trustees and legal counsel selected by the Union Trustees who shall be directed to confer with each other and, if possible, submit a joint opinion to the Board, and in like manner to employ legal counsel or joint legal counsel in connection with suits or claims by or against the Board or the Trust with respect to the Trust, and to pay the reasonable costs of such legal services from the Trust.

"4. To incur and pay out of the Trust any other expense reasonably incidental to the establishment and administration of the Trust. To carry on all of its functions under the name of Labor-Management Relations Trust and to carry any and all bank accounts in a trust fund under that name.

"5. To invest and reinvest such portion of the Trust as is not required for current expenditures and charges in such securities as are legal for the investment of trust funds under the laws of the State of California.

ment negotiating committees, for legal services and other costs * * * pertaining to said [Collective Bargaining] Agreement, and for other incidental costs and expenses of labor-management relations." The Trustees had under Article IV, ¶ J, similar powers to those of the Industry Program Trustees mentioned above.

It should be noted generally that in the Industry Program Trust three-fourths of the trustees constituted a quorum,[7] but a majority of all trustees (not a majority of a quorum) governed "in the determination of any matter." In the Labor-Management Relations Trust, five of the six trustees constituted a quorum,[8] but a majority of all trustees (not a majority of a quorum) governed "in the determination of any matter." Thus both labor and management maintained an absolute veto on any proposed action. Such procedure satisfies the requirement of employees' "participation." No matter could be acted upon by either trust without "employee participation." We have already ruled in Sheet Metal Contractors Association v. Sheet Metal Workers, supra, that the term "employee participation" must, like the term "representative," be given a broad and inclusive meaning. Such an interpretation is required of us by United States v. Ryan, supra.

We note that this case was decided below largely on the written evidence produced by stipulation. Oral testimony was limited, and only addressed to the question of the amount of interstate commerce, a question not raised on this appeal. The court below, therefore, had no better opportunity than we have to scrutinize witnesses.

We conclude that the evidence in this case clearly establishes that the three trusts (Industry Program, Labor-Management Relations Trust, and the Institute Trust) as well as the succeeding corporate entity, are severally "representative" of employees as that term is used in § 302(a) and (b); and that the purposes, powers and functions of the trusts and corporation here involved are not within the exemptions created by Congress, and are not permissible objects for the use of joint trust funds.[9]

We do not quarrel in the slightest with the laudable objectives of the trust amicably created by labor and management in this case. We sympathize with the efforts of both labor and management to solve a vexing industry problem. But like so many of such present day problems, our duty is to rule in accordance with that which the Congress (quote) in its wisdom (end of quote) has seen fit to enact. We cannot widen the door when the door sill has been carefully tailored by the representatives in Congress. The relief sought by the appellants herein must be found in congressional and not judicial action.

We *affirm* the judgment below.

"6. To adopt rules and regulations for the administration of the Trust which are not inconsistent with the purpose and intent of this Agreement."

7. Article IV, ¶ G.

8. Article III, ¶ G.

9. Nowhere has our attention been called to any attempt to comply, either in the trusts set up or the corporation, with the requirements of 29 U.S.C. § 186(c) (5) (B) with respect to the naming of neutral persons empowered to break a deadlock between trustees or directors.

PREPARED STATEMENT OF S. F. RAFTERY, GENERAL PRESIDENT, BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, AFL–CIO

Mr. Chairman and members of the Committee, I am pleased to submit this statement to the Committee on behalf of over 200,000 members of Local Unions and District Councils affiliated with the Brotherhood of Painters, Decorators and Paperhangers of America.

Section 302 of the Labor-Management Relations Act prohibits all payments by employers to employee representatives except in particular instances specified in sub-section (c). Some of the funds into which employer contributions may be made under sub-section (c) are those providing for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance or accident insurance, pooled vacations, holiday, severance or similar benefits, or apprenticeship or other training programs.

Frankly, we had been of the opinion that since Section 302 was meant to eliminate bribery, extortion, "sweetheart contracts" and other corrupt practices and, further, since no intimation had been made to the Congress that such abuses had been associated with joint industry promotion funds or joint boards empowered to interpret collective bargaining agreements, Congress had never intended to prohibit employer contributions for these purposes. However, a number of court decisions have held otherwise. Thus while it is clear that product or industry promotion programs and joint boards empowered to interpret collective bargaining agreements do not in themselves contravene the law, the judicial opinion thus far has been that employer contributions to jointly administered funds having such programs as their object are proscribed by Section 302. The theory underlying the decisions is that by enumerating certain permissible funds and purposes in Section 302, the Congress impliedly branded unlawful all other funds and purposes. Accordingly, any funds not specified as permissible in Section 302 could only be made so by amendment. For that reason it was necessary to amend the Section in 1959 to legalize employer contributions to jointly administered funds for the purpose of pooled vacations, holiday, severance or similar benefits, or apprenticeship or other training programs. And for that same reason, an amendment is necessary now to expressly permit employer contributions to jointly administered programs intended to promote products or to interpret collective bargaining agreements through a joint board or committee mechanism. Congress should now make it clear that Government will not interfere with decisions of labor and management, arrived at in the process of free collective bargaining negotiations, to develop and jointly administer such programs of mutual benefit.

The need for these programs has been long apparent in the painting industry. In the product and product application promotion area, our need is to combat severe loss of employment oportunities and seasonal fluctuations in employment, to advance the knowledge of our members concerning new products, tools, and methods of application, and to protect the public against fraudulent practices, unsafe procedures in painting and decorating, and unreliable contractors. All segments of our society, particularly home owners, should know—but many do not—that in view of the rapid introduction of new coatings in the past decades and the technical knowledge required to paint problem surfaces, the notion that anyone can be a skilled painter is an illusion. They should know—but many do not—that by obtaining the services of reputable contractors they obtain the services of insured, properly equipped skilled craftsmen who know color, paint engineering, the proper use of tools, and proper preparation of surfaces. They should know—but many do not—that by this means they can prevent a multitude of "do-it-yourself" accidents and obtain better and more pleasing results.

With respect to the Brotherhood's critical concern with the preservation and development of job opportunities, some startling conclusions were reached in a Report entitled "The State of the Art of Prefabrication in the Construction Industry" submitted to the Building and Construction Trades Department, AFL–CIO, on September 29, 1967, by Battelle Memorial Institute, a non-profit research organization based in Columbus, Ohio. The Report states that due to anticipated advances in prefabrication and technology, the Painters—in comparison with other construction trades—will have the least opportunities for growth. Prefabrication, according to the Report, "will represent the greatest threat to the Painters, in terms of overall continued growth." (p. 217). Again, in summarizing

the situation faced by our Brotherhood, the Report observes: ". . . advances in prefabrication and technology have and will continue to have severe adverse impacts on this affiliate. The effects will probably be a reduction in the manpower requirements and a tendency to reallocate the work from job site to factory." (p. 230).

Our partial answer to these problems and objectives is a promotion program designed to educate the public on the benefits of using professionally trained craftsmen and responsible and experienced contractors, and to advance the knowledge of our contractors and working force concerning new products, tools, methods of application, and work opportunities. Such a program, to be effective, must be jointly administered. Our industry is composed, for the most part, of small contractors employing ten men or less, and most of the affiliates of our Brotherhood are relatively small Local Unions. Neither labor nor management, if forced to press on alone, could create or maintain an effective program. Indeed logic and reason compel the conclusion that a program of mutual benefit to both parties should in fact be established and administered by both parties on a joint basis.

Several such programs have been successfully implemented in our industry, some of these through the operation of a jointly-administered trust fund. Particularly illuminating has been our experience in the Cleveland area, where the Painting and Decorating Institute is financed by employee and employer contributions. We have succeeded there in substantially raising industry standards and reducing loss of work due to seasonal fluctuations, using a variety of public media techniques including feature stories in newspapers and magazines, documentary films, special supplements in newspapers and magazines, billboards, bus cards, television and radio commercials, slide projector programs at women's clubs, illustrated advertisements, brochures, bank lobby displays, doorknob hangers, special painters' caps, painting and decorating awards in co-sponsorship with local newspapers, and direct mail programs. Moreover, we are anxious to effectuate a similar plan on the National level and, to that end, have held extensive discussions and conducted studies in conjunction with the Painting and Decorating Contractors Association. The Necessary Trust Agreement and other documents have been prepared, and we await the nod of Congress to begin what we consider to be a very worthy project.

Some testimony before the House Special Subcommittee on Labor in connection with Bills similar to S. 3149 suggested, in criticism, that by opting for the promulgation of promotion plans Unions were encroaching upon an area at best peripheral to employee interests and normally reserved to management prerogatives. We simply cannot believe that this is so, however, with reference to a program primarily intended to increase the knowledge and skills of our members and other employees whom we represent and to preserve and increase their job opportunities. It has also been said by the few critics of the Bill that its passage would result in jurisdictional disputes. In response, I wish to point out, first, that we do not view it as the purpose of a joint industry promotion program to encroach upon the jurisdiction of sister Unions, and we do not feel that it would have that effect; second, there are laws, rules, and regulations governing jurisdictional disputes which afford ample safeguards. I refer to Sections 8(b)(4)(D), 10(k) and 303 of the Labor-Management Relations Act, the AFL–CIO Constitution, and, in the construction industry, the National Joint Board for the Settlement of Jurisdictional Disputes.

There is an equally compelling need in our industry for joint boards or committees empowered to interpret collective bargaining agreements and to resolve disputes arising under such agreements. The construction industry is composed in the main of small, individual contractors operating in a number of localities, either simultaneously or from week to week, with a fluctuating work force and but few permanent employees, and subject to a variety of collective bargaining agreements. Jobs or projects are of relatively short duration. Disputes may and do ignite suddenly, and must be quickly resolved to avert serious damage to both employer and employees. What is required as an alternative to chaos in this type of industry is a permanently established body composed of representatives of both labor and management, who are intimately familiar with the characteristics, history and problems of the industry, the area, the agreements and parties involved, and who can therefore act with dispatch and resolve and render final and binding decisions that will be honored and respected by the parties to whom they are addressed. Those are the characteristics of the joint boards and committees through which the painting industry has historically

solved its grievances and disputes. There are over 200 such joint boards in operation today. Some of them have existed for as long as 50 years. A number of them cover an entire state or multi-state area. As a result of the successful operation of these joint boards and committees, the painting industry can boast of an enviable record of industrial peace in all parts of the country, relatively free of strikes and job shut-downs during the terms of existing collective bargaining agreements.

Yet the industrial peace I referred to, which so obviously benefits the public as well as members of the industry, is subsantially threatened by court decisions applying a literal interpretation to Section 302. A case in point is the joint committee program which for years has successfully resolved contract disputes in the Southern California area, more specifically in the jurisdiction of the Orange Belt District Council of Painters. The federal district court there rendered judgment several months ago that since that type of operation was not specifically described as permissible in Section 302(c), the program could not be financed through a joint trust fund. From a practical standpoint a joint committee such as I have described cannot be funded any other way. Therefore, our industry in Southern California faces the bleak prospect of returning to the age of economic "muscle" and "dog-eat-dog" atmosphere which threatened its ruination prior to the promulgation of their joint committee disputes plan. Other areas of the country may soon be similarly afflicted. And the need for this legislation is rapidly becoming acute.

With respect to neither promotion funds nor joint committee funds have we ever experienced any wrong-doing. With respect to neither was any evidence of abuse presented to Congress in 1947 upon the enactment of Section 302. With respect to neither were the few critics of previous bills similar to this one able to state that misuse had occurred. They contented themselves with the observation that joint funding raised the "possibility" of mismanagement. Surely any worth-while program may, if placed in the hands of irresponsible persons, be misdirected. Surely there have been such instances with respect to joint funds which are presently permitted by Section 302. Fortunately, the laws of the land have proved adequate to the task of correcting the situation as it arose. We shudder to contemplate the condition of society were it bereft of all protective legislation hypothetically susceptible to abuse.

In this connection, we are pleased to observe that S. 3149 contains carefully drawn and effective safeguards as to both types of funds. First, payments must be made to a separate trust and earmarked solely for the purpose specified in the Bill. Second, such funds may not be commingled with others or used to defray the cost of programs that are either employer or union functions. Third, these funds are subject to the strictures of clause (B) of the proviso to clause (5) of Section 302(c), including requirements that the detailed basis on which payments are to be made be specified in the agreement, that employees and employers be equally represented in the administration of the funds, that provision be made of impartial arbitration to break deadlocks, and that an annual audit of the funds be made available to interested persons. Fourth, the subject funds would be governed by the Welfare and Pension Plans Disclosure Act. Fifth, and finally, this Bill states that neither party shall be required to bargain on the establishment of such funds, and refusal to do so shall not constitute an unfair labor practice. On this point, critics have said that, despite the provision that such funds may only be established on a voluntary basis, Unions in the construction industry are strong enough to compel agreement by devious means. It has been suggested, for example, that by demanding and striking for an unreasonably high wage package while making it privately known that a lesser package would be acceptable if a trust fund program were achieved, a union could in effect compel compliance. Even accepting for argument's sake the dubious premise concerning the relative strengths of labor and management, we find this suggestion incredible. For it is manifest that joint programs of the nature covered by this Bill can only be effective if both parties are convinced of their worth and effectuate it with complete enthusiasm. Whether the program succeeds will depend not so much on its structure, but on its actual operation. One may be able to compel and enforce payment into a fund. But cooperation and the exertion of best effort, which constitute the foundation of such programs, cannot be compelled or enforced either by economic action or in a court of law. In that context, it is clear to us that coercion of any sort is not a realistic possibility.

This Bill is familiar to the Congress. Similar Bills have been before the House in 1962, 1963 and 1965. In 1965 this Bill's predecessor, H.R. 1153, was passed

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by the House. We are hopeful that with this Hearing we stand on the threshhold of final enactment in this session of Congress. Thank you for the opportunity to present the views of the Brotherhood.

PREPARED STATEMENT OF ASSOCIATED GENERAL CONTRACTORS OF GREATER MILWAUKEE, INC

This statement is submitted on behalf of the Associated General Contractors of Greater Milwaukee, Inc., a non-profit corporation affiliated with The Associated General Contractors of America, composed of construction firms operating in the Milwaukee area. This Association is steadfastly opposed to S. 3149.

AGC of Milwaukee specifically adopts and supports the positions taken by The Associated General Contractors of America and its Philadelphia affiliate. The General Building Contractors Association, in their appearances before the Subcommittee on July 15, 1968.

Section (a) of the proposed bill constitutes an unwarranted intrusion into an area universally recognized as part of management's normal and traditional role, the field of product promotion. One of the most vexing problems facing the construction industry today is the jurisdictional dispute. The enactment of this bill will result in aggravating this problem. Construction companies have contracts with a number of different unions. Among these unions, strong rivalries exist as to jurisdiction over any given product or process. It is inescapable that if jointly administered products promotion funds are permitted in this industry, their administration will become intertwined in the jurisdictional rivalries of the unions involved. In practical effect, this bill, if enacted, would allow the various building trade unions to utilize joint product promotion funds to support their work jurisdiction disputes. With further regard to Section (a), we are aware that the industry has been assured that the word "product" as used in the bill is not intended to encompass industry advancement programs. However, in order that there be no question whatever and that there be no temptation to an overzealous union to misconstrue the bill's intent, we would respectfully suggest that the word "product" be specifically defined in the bill itself as follows:

Product as used herein refers only to tangible materials or substances physically incorporated in buildings or other facilities, or the application of such materials as in painting or decorating. It does not refer to the activities of the so-called industry advancement programs.

The language of this proposed amendment is already present in the legislative history of the identical bill in the House, H.R. 15198. Recognizing this problem, Representative Steiger of Wisconsin specifically distinguished the product promotion funds from the industry advancement funds during his remarks on the floor of the House on April 1, 1968.

Section (b) of the bill would run counter to the cause of industrial peace in the construction industry. Presently, management and the unions share the cost of resolving their differences in the interpretation of the collective bargaining agreement. This system provides a built-in deterrent against either party filing frivolous claims. This deterrent will be removed with regard to the unions if this bill is enacted into law. With management providing 100 percent of the money, and the union having a 50 percent voice in how that money will be spent, the temptation toward frivolous cases, opulent facilities, and protracted grievance sessions will be greatly enhanced.

For the above reasons, the Associated General Contractors of Greater Milwaukee strongly oppose the enactment of S. 3149.

It is respectfully requested that this statement be entered in the hearing record of the Subcommittee.

PREPARED STATEMENT OF WILLIAM H. LINDSAY, JR., EXECUTIVE VICE PRESIDENT, MECHANICAL CONTRACTORS ASSOCIATION OF PHILADELPHIA, INC., PHILADELPHIA, PA.

As secretary and Executive Vice President of the Mechanical Contractors Association of Philadelphia, Inc., and on behalf of its membership, I submit this writing to register our opposition to Senate Bill 3149 which proposes an amendment to Section 302(c) of the Labor-Management Relations Act of 1947 by creating an additional exception to the prohibition against payment of money

or other things of value by an employer or association of employers to a labor organization.

For over thirty years, the Mechanical Contractors Association of Philadelphia, Inc., with a membership of more than fifty-five contractors engaged in the mechanical contractors industry, has been the bargaining agent for employers in negotiations with the craft unions engaged in the mechanical construction industry in the five county area of Southeastern Pennsylvania, Northern Delaware and Southern New Jersey, all known as Greater Philadelphia.

The Association was responsible for the establishment of one of the first industry advancement programs in the United States. That program, born in strife in 1956 because of the contention of unions that it should be jointly administered, developed into an effective and successful program only after a determination by the United States Court of Appeals for the Third Circuit in 1959, in *Mechanical Contractors Association of Philadelphia* v. *Local Union 420*, 265 F. 2d 603, that unions could not receive employers' funds for the purposes of the program and could not participate jointly with management in the administration of the funds.

One of the most recent undertakings of the Philadelphia Industry Fund has been to engage an employment director whose fulltime job is recruiting minority group members for training in the trades utilized by participating employers, establishment of a community relations program to encourage minority groups to develop skills in those trades, and take advantage of opportunities which exist in the industry. Since the middle of February, 1968, the Association has sent to be tested 104 applicants to two unions with whom the Association has Collective Bargaining Agreements. However, in that area, as in many others, the unions, by reason of their own goals or by reason of political necessity, may find it expedient to impede or resist progress. The same is true of many other areas in which the industry advancement program has acted under the direction of experienced management personnel desirous of promoting the welfare of the industry on social, economic, business and educational levels. It is the opinion of the members of the Association that Senate Bill 3149, if enacted into law, will effectively toll the final bell for the successful program and activities of the industry advancement program.

This special interest legislation is aimed only at "any employer of the construction industry". The long history of the Bill and its predecessors, none of which was enacted into law, demonstrate that the sole purpose of the Bill is to legalize existing unlawful arrangements involving a small number of the craft unions in the construction industry. This attempt to legalize an unlawful practice may enable a small number of construction employers and unions to return to the ranks of the law abiding, but the side effects would be devastating. The Bill would add another weapon to the already formidable arsenal of the construction industry unions. Contract settlements in the construction industry in the past four years have been higher than in any other industry, and they have far exceeded the average for all industry.

In 1966 and 1967, construction industry labor agreements have reached a record high. To now compel employers in that industry to divert industry funds into two special funds proposed by this Bill and give equal control would do no service to the industry, to the persons they service or to the country as a whole. This Association is well aware of the provisos of the Bill which indicate that it would not be an unfair labor practice for either management or labor to refuse to bargain as to contributions to a product promotion fund or a fund for a joint committee to interpret provisions for collective bargaining agreements. Despite that language, we have used the words "compel employers to participate" because our knowledge and long experience lead to the conclusion that this will be the net effect of the Bill.

Only a novice in the field of labor relations will take comfort from the provisos of the Bill which make the proposed trust funds permissive rather than mandatory issues for bargaining. It requires a rejection of all knowledge and practical experience to assume that such provisos will effectively prevent adamant insistence by the unions to the point of strike. Any person who is not familiar with the device of holding to an outrageous position on one or more mandatory issues of bargaining until there is capitulation on a permissive subject of bargaining is not experienced in construction industry negotiations and is not a keen observer of the American labor scene.

The recent record high wage and fringe settlements have resulted from the already excessive imbalance of power in favor of the construction unions and

the inability of construction employers to withstand a strike of even short duration.

If you recognize, as we think you must, that the Bill will result in forcing employer contributions to *union* established trust funds for very limited purposes, and if you consider, as you must, that labor costs in the construction industry have already ascended at a very disproportionately high rate, you must then conclude that the net effect of the Bill will be to wipe out broad based industry promotion funds which perform both private and public services, in favor of a union controlled product promotion fund and a union controlled fund to pay employees of, or representatives on, a joint committee or a joint board empowered to interpreted provisions of collective bargaining agreements or disputes arising thereunder. A simple examination of the two purposes stated in the Bill demonstrates that neither is necessary and neither constitutes a sufficient basis for creating an exception to the prohibitions of Section 302 of the Labor-Management Relations Act. That Section has left the basic prohibition intact for the very reasons which prompted its enactment in 1947. The proposed amendment will serve to negate the effect of that prohibition with no counter-resultant good effect.

How can a product promotion fund jointly administered by unions noted for vigorous opposition to any type of automation or any kind of pre-site assembly effectively serve the construction industry? One must concede the union's right to oppose automation or development of time, labor and money saving devices, but it requires a peculiar kind of thinking to legislatively compel the very employers against whom the unions will take those positions to contribute funds to support those unions' positions in the name of "product promotion". The strife and dispuation which will arise from any attempt to jointly administer an "industry promotional program" will prevent any effective action by the employers who are paying its cost if the union registers any objection. Can any person experienced in construction industry labor matters doubt that any attempt by employers to make expenditures of funds, to study or develop automation, equipment or other time or labor saving devices, at least will result in severe disagreement and, more probably, be the occasion for more work stoppages in the industry.

The construction industry unions are well organized on local, national and international levels. They are affiliated with the AFL–CIO and they have considerable assets and vast machinery available to them for fostering such promotional programs as they may deem desirable. Nothing prevents the few who will benefit from this legislation from engaging in joint promotional efforts with management and labor, each paying its own costs.

On the other hand, employers in the construction industry are loosely organized and do not have the vast political machinery of the unions. They must rely upon contributions to foster and promote their own industry in the manner they think best. The Philadelphia Mechanical Contractors has achieved sound industry goals which, in its opinion, could not have been achieved with joint administration of the Philadelphia Fund and could not have been achieved under any trust so limited in purpose as the industry promotional program referred to in the pending Bill.

With regard to the second specific fund contemplated by the Bill, i.e., a fund to defray the costs and expenses of a joint committee or a joint board to interpret provisions of collective bargaining agreements, we believe that it is an invitation to chaos. If a vast fund is created at the sole expense of the Employers, what can it be used for? Should a joint committee or joint board hire investigators? Who would designate those investigators? Should the members of the committee or board receive salaries or payment on a per-case basis? What would be the purpose of it all? At present, all of the contracts between this Association and the unions with which it deals provide for a grievance procedure culminating in arbitration. There is no cost involved except in the event of an arbitration since each step of procedure to that point provides for meetings between management representatives who are salaried management employees and union representatives who are salaried union employees. To date, neither has objected that the grievance procedure imposes any hazard or justified any additional payment. Representatives of both sides have always considered it to be part of their respective jobs. The cost generated by the occasional arbitration resulting from a failure of the parties to amicably resolve a dispute is borne equally by the parties which is as it should be. There is no vast fund to encourage patronage by creating employment for faithful union members or loyal retainers of incumbent officers or by adding to existing union staffs engaged for the purpose of administering

the currently existing joint funds such as welfare, pension, apprentice and vacation funds.

The basic prohibitions of Section 302 of the Act are sound. The present limited exceptions to those provisions are meritorious and there exist adequate safeguards to prevent abuse under those exceptions.

There is no merit or logic to the proposed amendment for it invites abuse of and disregard for the purpose of Section 302. More important, it is a partial defeat of the purpose and policy of the Act for it will not:

"* * * promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, * * * provide orderly and peaceful procedures for preventing the interference by either the legitimate rights of the other. * * *"

Above all else, it is clear that this Bill is not a Bill to permit a cooperative effort between unions and industry in product promotion or in the interpretation of contracts or settling of disputes. All of that is permitted and occurs without any violation of existing law. There is nothing to prevent any union and the employers whose employees they represent from engaging in a cooperative industry promotional program. All that the law prohibits is payment by employers to the unions. If there is any genuine interest in a cooperative effort, the parties can arrange to take such action as is mutually agreeable to them with each to bear its own share of the cost.

If this Bill becomes law, it will not serve as a basis for industry promotion. Indeed, one of the functions of an industry promotion fund is to resist this very kind of legislation. Could that be done with a fund over which some union had control? It is equally clear that no law prohibits a cooperative effort for purposes of contract interpretation or settlement of grievances and disputes. The law encourages that presently and with great success. There is no need to single out the construction industry as one which must contribute to a union controlled fund, for that purpose. There is no more need for such a fund in the construction industry than in any other industry. One example of establishment of joint boards or committees functioning on a national, multi-state area and local level is provided by the trucking industry.

The trucking industry employs more people than the construction industry. The Teamsters Union, which represents trucking employees, is larger than all of the construction unions combined. In addition, to many promotional or industry advancement funds administered solely by employees, the trucking industry participates in joint committees hearings with Teamsters to interpret agreements and resolve disputes thereunder at all levels. They do this without any special legislation and without any union established fund made up of employer contributions.

Many other industries and unions achieve the same results under the present law, including those in the construction industry in Philadelphia.

The Mechanical Contractors Association of Philadelphia, Inc., urges this Committee not to victimize the construction industry with the burden of this legislation. We urge the defeat of Senate Bill 3149.

PREPARED STATEMENT OF JOHN M. MONTGOMERY, COUNSEL, NATIONAL PAINT, VARNISH AND LACQUER ASSOCIATIONS, INC.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity of appearing before you to present the position of the National Paint, Varnish and Lacquer Association on S. 3149. This Association—with headquarters at 1500 Rhode Island Avenue, N.W., Washington, D.C.—is a voluntary non-profit association which, like Chambers of Commerce and Boards of Trade, acts as a business league for the industry which supplies paint and kindred products for this country's needs. Its members collectively produce about 90% of the total national dollar volume of paint, varnish, lacquer and similar products.

We strongly support S. 3149, the legislation presently before your Committee, which would amend Section 302(c) of the Labor-Management Relations Act of 1947 in order to permit employer contributions to trust funds established through the processes of collective bargaining agreements for the purpose of:

1. A joint industry promotional program; and

2. A joint committee or joint board empowered to interpret provisions of the collective bargaining agreement and to adjudicate disputes that might arise during the period of such agreements.

Our interest in the current bill is to protect and preserve joint industry committees established for intra-industry promotional efforts. Our industry has one such committee composed of representatives of the manufacturers, the painting and decorating contractors who apply the products which we manufacture, the distributors and dealers who sell the same to the public, and the employees of the contractors who are represented by collective bargaining agencies, all of whom have a vital interest in the welfare of the industry as a whole.

Our prime concern is to see that what might be regarded as a gray area is clearly defined through the passage of this legislation. This is the area where it should be clearly settled that contributions (for joint industry promotion of products) by employers to an industry committee on which employees have representation will be affirmed and removed from any possibility that such contributions might be questioned under the terms of Section 302(a) of the Labor-Management Relations Act of 1947.

We fully endorse the statements of the Painting and Decorating Contractors of America—already before your Committee—that recent Court decisions have shown clearly that the relief sought by this legislation must be obtained from the Congress and not from the courts, in order to remove the stigma of illegality from this proper act which, we are confident, the Congress did not intend to prohibit. The previous amendments to Section 302(c) which authorized specific exemptions for health and welfare, pension, vocation and apprentice training funds, establish a precedent for amending the original concept of the Section.

The employer is willing to contribute to a fund used for the purposes outlined above. We feel that enactment of this law would be highly beneficial in that it would place the stamp of approval of the Congress on contributions made by employers to an organization in which their employees are represented for valid and for vital purposes.

In our opinion, these joint funds for industry promotion are absolutely neecssary in order to remain competitive today in the market place. Expenditure of these funds are supervised carefully, and the monies are used wisely and to the overall advantage of all segments of the industry.

The manufacturers of paint varnish, lacquer and allied products, want to see this clearing house for industry problems continue to function effectively. We urge your support of S. 3149.

Thank you for your consideration.

PREPARED STATEMENT OF CHARLES W. RINEHART, MANAGER, INDUSTRIAL RELATIONS, OHIO CONTRACTORS ASSOCIATION

The Ohio Contractors Association is a free trade association with 234 active contractor-members who are engaged in Highway, Heavy, Municipal and Utility construction in the State of Ohio. All members of our Association are members of the national Associated General Contractors of America (A.G.C.) and also members of the American Road Builders' Association (ARBA). Our membership consists of some of the largest contracting firms in the country, very small contracting firms, out-of-State firms, Union contractors and non-Union contractors, thereby representing a good cross-section of the Highway-Heavy construction industry. My job involves representing these contractors in their relations with the various Unions with whom they do business and acting as their negotiating agent. Our Association has labor Agreements with the Operating Engineers' Union, Teamsters' Union, Laborers' Union and Cement Masons' Union, and our labor Agreements cover approximately 20,000 employees.

The Ohio Contractors Association, by unanimous action at its last Annual Convention, passed a resolution stating its opposition to industry-advancement programs. The Ohio Contractors Association is opposed to these industry fund programs when operated by management unilaterally or when administered by a trust agreement, as outlined in proposed H.R. 5690. Also, our Association is opposed to collection of funds by a labor agreement provision to finance costs of labor services, such as mediation services or administration costs of a labor agreement.

O.C.A. is opposed to H.R. 5690, as the passage of this bill would then make it appropriate for the Union to propose the establishment of these funds in our labor Agreements. We believe the establishment of these funds under a labor agreement can only lead to an eventual weakening of basic responsibility on the part of both parties. Under H.R. 5690 our Association would be forced to negotiate with respect to industry advancement programs or a labor service program, even

though we believe the services provided under those programs should be furnished by a voluntary trade association program.

What are the reasons we oppose the so-called industry advancement programs financed through provisions of a labor agreement?

(1) A free trade association, by establishing under a labor agreement forced payment to a fund, destroys the words "free" and "voluntary" with respect to the trade association. A trade association has the responsibility of furnishing to its members the services outlined under so-called industry advancement programs without benefit of a labor agreement provision.

A trade association is formed as a voluntary union of members working together to achieve goals common to all members and I am sure the advancement of their industry is a primary goal. Any association must have finances to carry its program forward, but, again, we submit this must be on a voluntary basis and not by collecting dues through a labor agreement. An association rendering a valuable service to its members and its industry will continue to be financed on a voluntary basis.

Presently, most industry advancement programs whose funds are collected by labor agreement provisions are staffed by the trade association personnel responsible for negotiating the labor agreement. In some cases regular dues to the trade association have been reduced and there exists almost total dependence on the industry advancement fund by the trade association for regular association services. I submit this is apt to cause problems at the bargaining table. If the association staff members' salaries are tied to an industry advancement program, how can the association represent the best interest of it members when faced by a Union threat of removal of the labor agreement provision covering the industry fund? Under these circumstances it is apparent that the bargaining strength of the association will be weakened.

We believe a good active free trade association to serve the best interests of the public, its members and its industry must be completely free and voluntary in membership and dues collections.

These funds collected by labor agreement provisions cause forced payment by a contractor to an association not of his choosing. I would cite as an example: A contracting firm, which is a member of our Association, is awarded an Interstate highway job in an Ohio county which is not covered by all of our OCA labor Agreements because of local Union jurisdiction. The contractor, a voluntary OCA member, paying OCA dues on a voluntary basis, is forced to work under the terms of a labor agreement negotiated by a local trade association and the agreement contains a so-called industry advancement program. Even though the local association performs no service for the contractor, they attempt through legal action or by Union coercion to collect the so-called industry fund payment. The contractor may be forced to pay a service charge or so-called industry fund, even though he does not desire to be represented or serviced by that particular association.

(2) Industry advancement funds or labor service programs financed by labor agreement provisions will mean additional costs to the taxpayer. At the present time our Association, as are most trade associations, is financed by voluntary dues payment by contractor-members.

For example, let us consider our Ohio Contractors Association and its potential in collecting a fund through a labor agreement provision rather than using our present voluntary method. OCA labor Agreements have potential work coverage in Ohio in 1963 to the extent of approximately $642,000,000. Approximately $510,000,000 of this total will be done under Union-OCA labor agreements. Approximately $170,000,000 will be on the "construction site" labor costs and approximately 48,750,000 hours of work will be performed on "construction site" work. Most present industry advancement program funds are at least two (2¢) cents per hour, and using this hourly cost there would be a $975,000 collection made under the program. Contractors would figure this cost as an hourly labor cost and the taxpayers would pay for this program. Our market potential for our Association members is almost entirely public works contracts. I submit that we, as an Association, are presently performing services which would be performed under so-called industry advancement programs, and we are performing these services on a much smaller budget than outlined above without the additional costs to the taxpayer. Any industry advancement fund collected under the terms of a labor agreement will reduce the product the taxpayer receives for his money.

H.R. 5690 further provides for the establishment of a fund jointly administered by management and Union, which would provide services of mediation or inter-

pretation of labor agreements. Again, these are services which should be provided by the two parties to the labor agreement by a voluntary dues basis. We believe this sort of fund would encourage the following:

(1) Parties would tend to abdicate their responsibility to settle disputes by "across-the-table" bargaining, because of a dependence on a well-financed umpire or mediation service.

(2) Would joint boards financed by this fund become dependent upon grievance problems? We have joint boards under our present labor Agreements to settle disputes and they are financed by the parties to the Agreement. We have an arbitration step under grievance procedures, financed by the parties to the Agreement. We have had very few grievances, but we are a construction industry with the usual labor problems. We believe one of the reasons for this healthy position is our dependence on collective bargaining between the parties rather than aribtration or dependence on outside parties for settling our labor problems. If we establish through a collective bargaining agreement a method to finance joint boards and arbitration procedures, we might encourage a dependence on outside forces to settle our disputes. If a dependence on outside forces to settle labor disputes becomes a "way of life", our free enterprise system will fail with respect to collective bargaining. This is not to say we oppose voluntary arbitration as such, but we believe it should not be so easy to go the route of arbitration. Let's not encourage it. We can all probably point to examples of this problem. Both parties should weigh the cost of arbitration and make a free determination, but, again, it should be a service furnished by the association to the contractor-member and to Union members by the Union, not by collecting additional money from the taxpayer.

In summary, the Ohio Contractors Association recognizes the intent of H.R. 5690 is to help the construction industry by providing a method of financing industry advancement programs under Management-Union joint trusteeship. We are of the opinion H.R. 5690 would be detrimental to the public, industry and Unions. We believe this bill would encourage trade association dependence on labor agreement force to collect dues for financing services previously performed by a free trade association. It could also cause a greater dependence on outside parties rather than the bargaining unit parties to settle labor problems. We believe the institution of these programs in labor agreements, to be made legal by H.R. 5690, will result in greater cost to the taxpayer with less actual construction. Finally, we believe these proposed industry or labor service funds, when provided under Management-Labor agreements, should be made illegal, whether operated unilaterally by management or under trust agreement, as outlined in your proposed H.R. 5690.

PREPARED STATEMENT OF G. P. ALEXANDER, EXECUTIVE VICE PRESIDENT, MECHANICAL CONTRACTORS ASSOCIATION OF PHILADELPHIA, INC.

As Secretary and Executive Vice President of the Mechanical Contractors Association of Philadelphia, Inc., and on behalf of its membership, I submit this writing to register our opposition to Senate Bill 3149 which proposes an amendment to Section 302(c) of the Labor-Management Relations Act of 1947 by creating an additional exception to the prohibition against payment of money or other things of value by an employer or association of employers to a labor organization.

For over thirty years, the Mechanical Contractors Association of Philadelphia, Inc., with a membership of more than fifty-five contractors engaged in the mechanical contractors industry, has been the bargaining agent for employers in negotiations with the craft unions engaged in the mechanical construction industry in the five county area of Southeastern Pennsylvania, Northern Delaware and Southern New Jersey, all known as Greater Philadelphia.

The Association was responsible for the establishment of one of the first industry advancement programs in the United States. That program, born in strife in 1956 because of the contention of unions that it should be jointly administered, developed into an effective and successful program only after a determination by the United States Court of Appeals for the Third Circuit in 1959, in *Mechanical Contractors Association of Philadelphia* v. *Local Union 420*, 265 F. 2d 603, that unions could not receive employers' funds for the purposes of the program and could not participate jointly with management in the administration of the funds.

One of the most recent undertakings of the Philadelphia industry fund has been to engage an employment director whose full-time job is recruiting minority group members for training in the trades utilized by participating employers, establishment of a community relations program to encourage minority groups to develop skills in those trades, and take advantage of opportunities which exist in the industry. Since the middle of February, 1968, the Association has sent to be tested 104 applicants to two unions with whom the Association has Collective Bargaining Agreements. However, in that area, as in many others, the unions, by reason of their own goals or by reason of political necessity, may find it expedient to impede or resist progress. The same is true of many other areas in which the industry advancement program has acted under the direction of experienced management personnel desirous of promoting the welfare of the industry on social, economic, business and educational levels. It is the opinion of the members of the Association that Senate Bill 3149, if enacted into law, will effectively toll the final bell for the successful program and activities of the industry advancement program.

This special interest legislation is aimed only at "any employer of the construction industry." The long history of the Bill and its predecessors, none of which was enacted into law, demonstrate that the sole purpose of the Bill is to legalize existing unlawful arrangements involving a small number of the craft unions in the construction industry. This attempt to legalize an unlawful practice may enable a small number of construction employers and unions to return to the ranks of the law abiding, but the side effects would be devastating. The Bill would add another weapon to the already formidable arsenal of the construction industry unions. Contract settlements in the construction industry in the past four years have been higher than in any other industry, and they have far exceeded the average for all industry.

In 1966 and 1967, construction industry labor agreements have reached a record high. To now compel employers in that industry to divert industry funds into two special purpose funds proposed by this Bill and give equal control would do no service to the industry, to the persons they service or to the country as a whole. This Association is well aware of the provisos of the Bill which indicate that it would not be an unfair labor practice for either management or labor to refuse to bargain as to contributions to a product promotion fund or a fund for a joint committee to interpret provisions for collective bargaining agreements. Despite that language, we have used the words "compel employers to participate" because our knowledge and long experience lead to the conclusion that this will be the net effect of the Bill.

Only a novice in the field of labor relations will take comfort from the provisos of the Bill which make the proposed trust funds permissive rather than mandatory issues for bargaining. It requires a rejection of all knowledge and practical experience to assume that such provisos will effectively prevent adamant insistence by the unions to the point of strike. Any person who is not familiar with the device of holding to an outrageous position on one or more mandatory issues of bargaining until there is capitulation on a permissive subject of bargaining is not experienced in construction industry negotiations and is not a keen observer of the American labor scene.

The recent record high wage and fringe settlements have resulted from the already excessive imbalance of power in favor of the construction unions and the inability of construction employers to withstand a strike of even short duration.

If you recognize, as we think you must, that the Bill will result in forcing employer contributions to *union* established trust funds for very limited purposes, and if you consider, as you must, that labor costs in the construction industry have already ascended at a very disproportionately high rate, you must then conclude that the net effect of the Bill will be to wipe out broad based industry promotion funds which perform both private and public services, in favor of a union controlled product promotion fund and a union controlled fund to pay employees of, or representatives on, a joint committee or a joint board empowered to interpret provisions of collective bargaining agreements or disputes arising thereunder. A simple examination of the two purposes stated in the Bill demonstrates that neither is necessary and neither constitutes a sufficient basis for creating an exception to the prohibitions of Section 302 of the Labor-Management Relations Act. That Section has been in effect since 1947. In almost twenty-one years, Congress has left the basic prohibition intact for the very reasons which prompted its enactment in 1947. The proposed amendment will serve to negate the effect of that prohibition with no counter-resultant good effect.

How can a product promotion fund jointly administered by union noted for

vigorous opposition to any type of automation or any kind of pre-site assembly effectively serve the construction industry? One must concede the union's right to oppose automation or development of time, labor and money saving devices, but it requires a peculiar kind of thinking to legislatively compel the very employers against whom the unions will take those positions to contribute funds to support those unions' positions in the name of "product promotion." The strife and disputation which will arise from any attempt to jointly administer an "industry promotional program" will prevent any effective action by the employers who are paying its cost if the union registers any objection. Can any person experienced in construction industry labor matters doubt that any attempt by employers to make expenditures of funds, to study or develop automation, equipment or other time or labor saving devices, at least will result in severe disagreement and, more probably, be the occasion for more work stoppages in the industry.

The construction industry unions are well organized on local, national and international levels. They are affiliated with the AFL–CIO and they have considerable assets and vast machinery available to them for fostering such promotional programs as they may deem desirable. Nothing prevents the few who will benefit from this legislation from engaging in joint promotional efforts with management and labor, each paying its own costs.

On the other hand, employers in the construction industry are loosely organized and do not have the vast political machinery of the unions. They must rely upon contributions to foster and promote their own industry in the manner they think best. The Philadelphia Mechanical Contractors has achieved sound industry goals which, in its opinion, could not have been achieved with joint administration of the Philadelphia Fund and could not have been achieved under any trust so limited in purpose as the industry promotional program referred to in the pending Bill.

With regard to the second specific fund contemplated by the Bill, i.e., a fund to defray the costs and expenses of a joint committee or a joint board to interpret provisions of collective bargaining agreements, we believe that it is an invitation to chaos. If a vast fund is created at the sole expense of the employers, what can it be used for? Should a joint committee or joint board hire investigators? Who would designate those investigators? Should the members of the committee or board receive salaries or payment on a per-case basis? What would be the purpose of it all? At present, all of the contracts between this Association and the unions with which it deals provide for a grievance procedure culminating in arbitration. There is no cost involved except in the event of an arbitration since each step of procedure to that point provides for meetings between management representatives who are salaried management employees and union representatives who are salaried union employees. To date, neither has objected that the grievance procedure imposes any hazard or justified any additional payment. Representatives of both sides have always considered it to be part of their respective jobs. The cost generated by the occasional arbitration resulting from a failure of the parties to amicably resolve a dispute is borne equally by the parties which is as it should be. There is no vast fund to encourage patronage by creating employment for faithful union members or loyal retainers of incumbent officers or by adding to existing union staffs engaged for the purpose of administering the currently existing joint funds such as welfare, pension, apprentice and vacation funds.

The basic prohibitions of Section 302 of the Act are sound. The present limited exceptions to those provisions are meritorious and there exist adequate safeguards to prevent abuse under those exceptions.

There is no merit or logic to the proposed amendment for it invites abuse of and disregard for the purpose of Section 302. More important, it is a partial defeat of the purpose and policy of the Act for it will not:

"* * * promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, * * * provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, * * *"

Above all else, it is clear that this Bill is not a Bill to permit a cooperative effort between unions and industry in product promotion or in the interpretation of contracts or settling of disputes. All of that is permitted and occurs without any violation of existing law. There is nothing to prevent any union and the employers whose employees they represent from engaging in a cooperative industry promotional program. All that the law prohibits is payment by employers to the union. If there is any genuine interest in a cooperative effort, the parties can arrange to take such action as is mutually agreeable to them with each to bear its own share of the cost.

If this Bill becomes law, it will not serve as a basis for industry promotion. Indeed, one of the functions of an industry promotion fund is to resist this very kind of legislation. Could that be done with a fund over which some union had control? It is equally clear that no law prohibits a cooperative effort for purposes of contract interpretation or settlement of grievances and disputes. The law encourages that presently and with great success. There is no need to single out the construction industry as one which must contribute to a union controlled fund, for that purpose. There is no more need for such a fund in the construction industry than in any other industry. One example of establishment of joint boards or committees functioning on a national, multi-state, state area and local level is provided by the trucking industry.

The trucking industry employs more people than the construction industry. The Teamsters Union, which represents trucking employees, is larger than all of the construction unions combined. In addition to many promotional or industry advancement funds administered solely by employees, the trucking industry participates in joint committee hearings with Teamsters to interpret agreements and resolve disputes thereunder at all levels. They do this without any special legislation and without any union established fund made up of employer contributions.

Many other industries and unions achieve the same results under the present law, including those in the construction industry in Philadelphia.

The Mechanical Contractors Association of Philadelphia, Inc. urges this Committee not to victimize the construction industry with the burden of this legislation. We urge the defeat of Senate Bill 3149.

MECHANICAL CONTRACTORS ASSOCIATION
OF AMERICA, INC.,
Springfield, Mo., May 13, 1968.

Senator RALPH W. YARBOROUGH,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: Since we, the contractors, are the sole contributors to our Industry Advancement Fund, we are strongly opposed to the passage of S. 3149, H.R. 15198, or any similar bill allowing joint administration of Labor and Management of our Funds. Labor has its voice in our Labor Agreement with Local Union #178.

Sincerely,

ROBERT D. ADAMS,
President, Mechanical Contractors Association of Springfield, Mo.

ASSOCIATED PLUMBING CONTRACTORS OF MARYLAND, INC.,
Baltimore, Md., May 14, 1968.

Senator RALPH W. YARBOROUGH,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: Members of the statewide Associated Plumbing Contractors of Maryland, Inc., urge you to vote against the Industry Fund Bill S. 3149.

It is the opinion of this Association that passage of the Bill would be detrimental to the successful management of business in general.

Yours truly,

GEORGE R. HARDESTY, Jr.,
President.

ASSOCIATED PLUMBING & MECHANICAL CONTRACTORS
OF TAMPA, INC.,
Tampa, Fla., May 13, 1968.

Senator RALPH YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: Our Association was advised that hearings will be held on May 21, 1968 on Bill S. 3149.

We would greatly appreciate your considering our viewpoints concerning this bill and after thorough study of our comments, we hope you feel as we do that this bill will not only be detrimental to the construction industry but to the general public as well.

As we understand the bill, it would amend Section 302C and allow for both Union and Management to administer two trust funds. One trust fund set up for the purpose of product promotion and another trust fund set up for the purpose of the interpretation of a Collective Bargaining Agreement. Heretofore, it has been illegal for both Union and Management to administer a fund which would be mutually beneficial to both parties. The only funds that are jointly administered are those funds in which employees solely derive benefits therefrom but contributed to by employers only. Industry promotion funds, which are contributed to solely by employers cannot be jointly administered since they are for the benefits of the employers in the promotion of the overall industry, with certain limitations. Now, by the amendment of Section 302C through the mechanics of S. 3149, it would legalize these two trust funds as mentioned above to be jointly administered but these funds would be contributed solely by Management.

This bill is totally disguised by the word Permissive. In our past experience in dealing with organized labor, especially in the last few years, we may as well change this word Permissive and add the words, Should Organize Labor Want These Funds. If organized labor during their bargaining would ask for these funds and management would refuse to agree to them, management would find themselves in a position of possibly having to pay drastically in reprisals not agreeing to do so. So the word, Permissive, in our estimation, is only a camouflage.

In analyzing each of these funds, we would like to comment on fund one, Product Promotion. The construction industry is made up of many crafts. There are but a few crafts such as plasterers, painters, decorators, etc., which only have one product to promote. Such a fund, if created, may be of a benefit to them, but we might add, that through new products that have been researched and developed by manufacturers, these new products have cut deeply into the labor market but still accomplishes the same purpose for which plastering, painting and decorating would accomplish. The amount of work that is involved in each construction project dollarwise for these crafts are very minor in the overall cost of a project, but yet these new products have proven in many ways to have been a labor saving item to the ultimate consumer, so naturally labor would very much like to do away with the advancement of these new products in some manner in order to re-establish themselves into a more favorable labor demand.

Now we will look at the rest of the construction industry. The people who we represent, namely Plumbing, Heating and Air Conditioning Contractors do not have one product to promote or one product that is available to them solely. We are an industry of many, many products. This we would never want any other way. By it being this way, the manufacturer of each product is continuously striving to manufacture a product which would accomplish the purpose in which it was intended as well as making it more enticing to the construction industry in the form of labor saving to install and more decorative in many instances to the consumer to induce their designer to specify their particular product. So consequently, through this competitive marketing, great strides have been made in our industry by the various manufacturers of plumbing, heating and air conditioning equipment which have helped the construction industry and the general public. The most expensive part of any construction job is that of labor. In the past ten years the factor ratio of increased cost of materials vs. the increased cost of labor is more than fourteen to one so you can well see, because of the rising and never ending cost of labor, why the cost of construction has spiraled so much.

To conclude our statement regarding the product fund, let us leave the application and research development, the market development, the promotion with architects, engineers and government contracting officials of each of these individual products to their respective manufacturer as well as each manufacturer publicizing their product application technical information and data which is greatly considered by any architect or engineer or governmental agency when it comes to selecting a particular product. *Do not* put into the hands of organized labor, the power to virtually dictate to the general public what they want to install. Naturally, it will be the items that require the most labor to install. The cost of contributing into this fund, if established, would mean that the contractor would have to add this cost into his bids and would run the construction cost up

even more, in fact, if we were to be a part in our craft of some promotional tactic, we may well find ourselves in violation of present laws by promoting one product and discriminating against others.

Now, for a few comments on the trust fund #2 that would be set up and administered jointly, which again we reiterate, "That is contributed to solely by employers", for the purpose of interpreting of provisions of collective bargained agreement and to resolve and determine issues arising from disputes regarding provisions of a collective bargained agreement.

This, in our estimation would be the greatest inducement to have more strikes and disputes in our construction industry than ever before in its history, because for the simple fact that virtually every dispute or disagreement would go to arbitration because the unions would hope that by going into arbitration they might win and after all, what would they have to lose by doing so, since management is footing the bill. The provisions in most contracts that are negotiated today, are set up such as ours. Should a dispute arise, we in this area have a grievance committee comprised of both Union and management. Should we not come to a decision, then we call in an arbitrator and the loser foots the bill, which has always been the traditional way of settling these disputes. Consequently, we seldom ever have any dispute that will go to the point of arbitration, although we do have far too many disputes today than we should.

One other thing, we might mention, why should management have to pay for disputes between one union and another and if this should have to go to arbitration or eventually to the national board, it would cost the contractor not only for the cost of contributing into such a fund but the costly delay of getting his contract done and furthermore, possibly, when the dispute is settled, having to go into overtime work, "which is very enticing to the average employee" or that his job would go into liquidated damages. This simply means if this fund be permitted under the mechanics of S. 3149 that a contractor would not only have to figure the cost of contributions into this fund, but would have to say to himself, "I WONDER HOW MANY DISPUTES WE WILL HAVE ON THIS JOB AND HOW MUCH DELAYED TIME COST I WILL HAVE OR I WONDER IF I CAN DO THIS JOB WITHIN THE PERIOD OF TIME SPECIFIED?" This would furthermore add to the cost of construction.

Once again, the bill says that this trust fund is permissive and we again reiterate, if we do not agree to bargain, we cannot be made to do so by NLRB, but if we do not, we will suffer by not doing so in other ways. This part of the bill, namely, the trust fund set up for the interpreting of contractor provisions, is the most assinine of the two. In fact, it is the worst piece of legislation we have had to face in the construction industry in many years, and we are sure if you will read the bill very carefully, you will agree with us. The face of what is written seemingly is a very innocent bill, but underneath the surface of what is written, the ramification of what could happen is disastrous.

To summerize both of these trust funds and their consequences, we feel that, as I am sure you do, we need to find ways and means to cut the cost of construction in any way possible that can be found. The school systems throughout the nation are suffering for the lack of school buildings for our children to have a place to be educated. Hospitals today are so evercrowded with patients. There are those who are in bad need of medical care that need to be in the hospitals, but yet there are no beds for them. Our slum areas in the greater majority of cities throughout the nation are deplorable simply because we do not have enough tax dollars to build better housing or to help and aid those who might want to develop these areas into a better place to live. But each time that we increase the cost of the demanded construction that is necessary today, that means the lesser amount of money we would have to do the things that we today, need so badly. We as contractors in the industry want only to make a decent profit and realizing full well as the cost of construction goes up, we are more and more obligated to the general public which we serve, to use every means possible to build a job just as cheaply as possible in order to save money, but if the cost of construction continues to rise more and more, then it is only natural to assume that the general public will have to be taxed more to even get the bare necessities, much less that which is needed.

We beg of you to consider our viewpoints, and then when the time comes to vote, please do not vote to give organized labor more, stronger control by demanding of you to vote for this bill. Instead, please consider the general public for which you were elected to represent and vote to *DEFEAT* this bill.

Yours very truly,

PARKE SYERS,
Executive Secretary.

MINNESOTA ASSOCIATION OF PLUMBING, HEATING,
COOLING CONTRACTORS, INC.,
Minneapolis, Minn., May 9, 1968.

Hon. RALPH W. YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: We urgently request your opposition to the Industry Fund Bill, S. 3149. Attached to this letter is a summary of our reasons why we feel this legislation should be defeated.

We are submitting them to you as chairman of the Subcommittee on Labor of the full Committee on Labor and Public Welfare in the Senate. We hope this statement will be made a part of the proceedings on the day of the hearing, which we understand is May 21.

I am taking the liberty of sending copies of this statement to the other members of your committee so they will be familiar with our reasons for opposing this legislation.

Sincerely yours,

ROY J. WEST,
Executive Vice President.

Enclosure.

PREPARED STATEMENT OF ROY J. WEST, EXECUTIVE VICE PRESIDENT, MINNESOTA ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS, MINNEAPOLIS, MINN.

REASONS WHY S. 3149 SHOULD BE DEFEATED

There are many industry funds throughout the United States. The only limitation now is that they may not be jointly administered by management and labor. It is this limitation that S. 3149 would remove.

First impression tends to indicate that agreement interpretation features of the bill would promote labor-management stability—that strikes would be eliminated. Actually this portion would have no application whatever when an agreement ends and the new one is to be negotiated.

Industry fund moneys are contributed solely by management. It is management's money, and decisions regarding its expenditure should be exclusively management's.

An industry fund, rather than encompassing an employer-employee relationship, concerns itself more with the relationship of employers to each other, and with employers to the consuming public—responsibilities of management.

If labor were permitted to jointly administer industry funds, it would carry with it a veto power whenever it disagreed with management on the use of such funds.

A union's function is to represent its members with respect to wages, hours, and working conditions. S. 3149 would extend the union's scope of interest to matter of advertising, research, promotion of industry, and products.

S. 3149 is ambiguous, with regard to product promotion. This ambiguity could even expose the employer to criminal responsibility.

Under S. 3149, there could be a tremendous increase in the number of labor disputes going to arbitration. At the present time, the cost of arbitration proceedings is borne by the loser, with the result that very few cases go to arbitration.

Under S. 3149, the cost would be borne by the industry fund, with the result that the cases could go to arbitration. Labor would have no responsibility—the entire burden for the cost of arbitration would fall on the employer.

S. 3149 could result in an unfair restriction of trade, S. 3149 specifically provides for product promotion. Our contractors normally use thousands of products and believe each product should stand on its own merits. To oppose a product would be restrictive; to promote a product is the responsibility of the manufacturer.

The passage of S. 3149 could mean the usurpation by labor of management's right to operate and promote their industry. Management industry funds are sometimes now used to finance classes in salesmanship, for example. Management feels that such classes benefit not only the contractor, but labor as well. Under S. 3149, labor might well insist that industry funds be used for purposes of their own choosing.

Under S. 3149, management could be financing labor's programs. Although S. 3149 is permissive, not mandatory, labor could undoubtedly insist on negotiating a joint industry fund as it would mean that management would have to pay for programs which are currently being financed by labor. Management's refusal

to negotiate an industry fund could undoubtedly lead to a strike for better wages, hours, and working conditions.

Passage of S. 3149 would mean an increase in building costs. Joint management of industry funds would undoubtedly mean an increase in cost to the contractor which would have to be passed on to the consumer. Such costs might well increase the cost of a medium-price, single dwelling by as much as $500.

In fact, the cost of financing all arbitration proceedings might well reach that figure.

ASSOCIATED PLUMBING & HEATING CONTRACTORS OF WASHINGTON, INC.,
Seattle, Wash., May 9, 1968.

Subject: S. 3149.

Chairman, Subcommittee on Labor
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: We have been notified that hearings will be held on S. 3149 on May 21, 1968. We respectfully request that the attached statement be accepted for the hearing record.

Very truly yours,

L. MARK GRAY, *Executive Director.*

PREPARED STATEMENT OF L. MARK GRAY, EXECUTIVE DIRECTOR, ASSOCIATED PLUMBING & HEATING CONTRACTORS OF WASHINGTON, INC., SEATTLE, WASH.

This statement of opposition to S. 3149 is made by L. Mark Gray, Executive Director of the following management groups engaged in the Plumbing and Pipefitting Contracting business in Washington State:

Associated Plumbing and Heating Contractors of Washington, Inc.

Washington State Employers' Council for the Plumbing and Pipefitting Industry

Mechanical Contractors Association of Seattle

Plumbing and Pipefitting Industry, Seattle Area Negotiating Committee

Section 302 of the Labor Management Act, which S. 3149 seeks to amend, applies to all industries and all unions. The bill is written to apply only to the construction industry and for two special situations of strictly special interest. The two situations are: (1) The Plastering and Lathing Contractors with the former jointly administered National Plastering Bureau, and (2) the Painting and Decorating Contractors and their committees supported by jointly administered funds to arbitrate labor disputes. If there is justification at all for the bill then it should apply to all industries as well as the construction industry.

Industry promotion funds are financed solely by Management. The money is Management's. S. 3149 unjustly limits legitimate prerogatives on the use of the money. The ambiguous language of the bill would allow unions and the National Labor Relations Board to argue that some industry fund projects are "Product" promotions and thus should be jointly administered.

Some of the projects supported by industry funds that would fact this "Product" interpretation are:

1. Working with architects and engineers to improve plans and specifications.
2. Educational seminars on management subjects.
3. Combating practices of utilities who use subsidies to sell electric heat.

All of these programs are management oriented. Typical industry fund projects are concerned with the relationship of management people to each other and with management to the consuming public. S. 3149 would extend the union's scope of activity to matters unrelated to its members interest: Advertising, research, educational seminars, public relations promotions, etc. A good portion of the bill hinges on a definition of the phrase "Products Promotion" yet the term is not defined in any manner.

S. 3149 would change the established and successful pattern in the construction industry of labor and management sharing expenses of mediation and arbitration. Employers would be placed in the position of paying the expenses of their opposite numbers on committees and boards to hear and determine labor disputes and interpretations of the labor-management agreement. With no expense to themselves involved, labor would reasonably be expected to lodge more and more complaints against employers, file more charges and initiate more work stoppages. The potential cost to employers and the consuming public is staggering.

The suggestion that bargaining over jointly administered industry promotion funds is voluntary, not mandatory, is purely illusory. As a practical matter there is sufficient bargaining leverage to make them mandatory.

In considering the bill we earnestly urge your understanding of the implications in the language, much less its impact on the construction industry and the consumer.

PLUMBING, HEATING, COOLING CONTRACTORS ASSOCIATION
OF NORTHWESTERN OHIO, INC.,
Toledo, Ohio, May 9, 1968.

Senator RALPH M. YARBOROUGH,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: Your Labor Sub-Committee will soon be having hearings on your Bill S–3149.

This bill will allow unions to abrogate Management's prerogatives in promoting their own businesses and supporting their own industry. The wording of this bill will be interpreted by unions and the NLRB to mean that all construction industry promotion funds *must* be jointly administered.

Under this bill Management, at the bargaining table, will not be in a position to refuse to allow unions to inject themselves into Management functions with all of the corresponding rights and privileges, and without subjecting themselves to any of the risks and responsibility.

We can't understand why the construction industry has been singled out for this attention, since a great majority of the work in this industry is not the selling of a product, but the performance of a service.

This Association requests that you reconsider your sponsorship of this bill, especially in light of the testimony to it which you will have in the forthcoming hearings.

Very truly yours,

DAVID M. SHOWALTER, *Secretary.*

INDIANA ASSOCIATION OF PLUMBING, HEATING, COOLING CONTRACTORS, INC.,
Indianapolis, Ind., May 9, 1968.

Senator RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: It is our understanding that Senate hearings on the Industry Fund Bill (S. 3149) are scheduled for May 21.

You will please be advised of our membership's opposition to this measure, for a number of valid reasons:

1. Industry promotion and related advertising and public relations are essentially a management function.

2. In virtually every instance, ALL OF THE MONEY PAID INTO INDUSTRY FUNDS COMES FROM MANAGEMENT . . . NOT LABOR. Why, then, should labor have a voice in management of such funds?

3. Passage of S. 3149 would open a panadora's box insofar as labor contract negotiations are concerned. Labor could insist that such funds be included in contract negotiations, notwithstanding the fact that the intent of our present labor law is to restrict such negotiations to wages, hours, and conditions of employment.

4. There is, in fact, no need for Federal legislation in this regard. The final determination as to who will manage such funds should be left to the local bargaining units with no interference—direct or implied—from the Federal Government.

We urge you to vote against this nonessential and potentially damaging legislation.

Thank you.

W. CHANNING SMITH,
Executive Manager.

METROPOLITAN DETROIT PLUMBING CONTRACTORS ASSOCIATION,
MECHANICAL CONTRACTORS' ASSOCIATION OF DETROIT,
Detroit, Mich., May 15, 1968.

Mr. ROBERT HARRIS,
Counsel, Senate Labor Subcommittee,
New Senate Office Building,
Washington, D.C.

DEAR MR. HARRIS: I submit to you the following statement of our reasons, and those of the 200 contractors that we represent, against S. 3149 (Industry Fund Bill) which I would like included in the official records of the hearing which is scheduled for May 21st.

Many of the representatives in Washington seem to be of the impression that this bill is being supported both by Management and by the Unions. They seem to take the position that Government should not stand in the way of any arrangement that Management and Union would like to make in this regard. The point is that Management is not in favor of this bill for the following reasons:

1. This would lead to inefficient bargaining. Under present arrangements, if a dispute between Management and the Union goes to court, the loser pays the litigation expense. Under S. 3149, the fund would pay these costs and consequently the Union might very well take a lot of cases to court regardless of whether they thought they could win or not, just to harass Management.

2. It would create wasteful inter-Union rivalries. Industrial funds would be used by both industrial and craft unions to fight each other over whether or not equipment should be prefabricated or built on the job site.

3. It would usurp Management's right to conduct such highly important functions as:

(*a*) Working with architects and consulting engineers toward improving plans and specifications.

(*b*) Conducting educational seminars on Management subjects.

(*c*) Promoting the industry to attract qualified personnel regardless of race, creed or color.

(*d*) Combating unfair practices of utilities who use subsidiaries to sell electric heat.

4. The bill constitutes special interest legislation. It applies only to the construction industry and is designed to overcome one problem in just one segment of the industry. The legislation excludes all other industries, industrial and independent unions.

I am enclosing an article from the Wall Street Journal which illustrates the problems that can arise when the Union gets control of funds.

Sincerely,

JOHN P. DAVIS,
Executive Secretary.

Enclosure

[From the Wall Street Journal, Thursday, May 2, 1968]

PARTY ON THE SPOT—PROBE OF UNION'S GIFTS FOR CAMPAIGNS POSES A RISK FOR DEMOCRATS

U.S. AIDES SEEK TO PROSECUTE CHIEF OF ST. LOUIS LOCAL, BUT HIGHER-UPS BAR MOVE

Hiding the Sources of Funds

(By Jerry Landauer and Nicholas Gage, Staff Reporters of the Wall Street Journal)

WASHINGTON.—A labor leader who bosses just 1,200 Steamfitters Union members in one Midwestern city might seem unworthy of fretful attention from the Government's top law enforcers. Yet the Justice Department is worried about Lawrence Callanan—not so much because he's an ex-convict holding union office but because a proposed exposure of his doings might harm the Democratic Party.

Mr. Callanan, business manager and boss of Steamfitters Local 562 in St. Louis, already enjoys considerable power and notoriety in his home state. A

Wall Street Journal story on Feb. 2 revealed how he is able, as a free-spending friend of numerous politicians, to hand-pick candidates for public office, dispense patronage and influence legislation in Missouri. On the national level, Mr. Callanan has been the beneficiary of an eyebrow-raising tax decision by the Internal Revenue Service and the grateful recipient of a Presidential commutation enabling him to resume union activity in 1964 following a six-year prison term for extortion.

Now Federal prosecutors would like to send him back to jail. They have presented to a grand jury in St. Louis evidence seeking to show that he has converted union dues money to political purposes, including $60,000 contributed to the Democrats six months after the Presidential commutation. If he's brought to trial, the courtroom disclosures might impel the Government to investigate how other unions, local and national, raise money to help underwrite the Democratic Party's campaign expenses. So far, however, the prosecutors' efforts to try Mr. Callanan have been blocked by higher-ranking Justice Department officials.

DUCKING A LAW

Besides drying up or scaring away millions of dollars in campaign cash, putting Mr. Callanan on trial could also expose law avoidance by certain of the party's leading fund-raisers.

It's known, for example, that Mr. Callanan met with two Democratic money men in October 1964 to receive instructions on how to divide the prearranged $60,000 campaign gift. Specifically, he was told to send one check for $25,000 directly to Doyle Dane Bernbach Inc., the New York advertising agency that handled LBJ's 1964 campaign. In this way, the fund-raisers ducked the law requiring national political committees to disclose the sources of all their income.

"This is the kind of case that used to make Bobby Kennedy wring his hands and say, 'My God, why did I ever become Attorney General?' " one Government man remarks noting that few beneficiaries of Mr. Callanan's $300,000-a-year political fund care to be identified with him. Accordingly, the White House is known to be interested in the case, and the Justice Department is handling it with particular care.

In recent months, Justice Department attorneys Brian Conboy and Edgar Brown have twice urged prosecution. Each time they have had the approval of Henry Petersen, chief of the department's organized crime section, and Robert Rosthal, chief of the election fraud unit. But each time higher-ups overruled the recommendations. From 97 counts the draft indictment has been progressively pared to one. And even this third abbreviated draft, dated March 1, seems in danger of being sidetracted. Top Justice Department officials refuse comment on any aspect of the Callanan matter, beyond saying it's still under investigation.

A "VOLUNTARY" FUND

Between last Oct. 16 and Feb. 2, a special 23-man grand jury in St. Louis spent 18 days examining stacks of subpoenaed records and taking testimony from more than 60 witnesses. These included many members of Local 562 who pay 50 cents a day (outsiders working temporarily in the local jurisdiction pay $2) into a "voluntary political fund" controlled by Mr. Callanan.

The witnesses' statements raised doubts that these political collections are truly voluntary, as required by law. On the contrary, witnesses indicated, the union chiefs seem to regard the contributions much like dues, collecting them systematically, periodically and rigorously.

But, for reasons that haven't been explained, the Government failed to follow up with a recommendation either to indict or to ignore the mass of testimony. Indeed, there hasn't been a peep from Washington in three months.

Meantime, the grand jury's life is being extended beyond the six-month period prevalent in St. Louis; ordinarily, it would have been dismissed about April 1. To some observers, the extension indicates that Washington may yet give the go-ahead, perhaps after waiting long enough to assure that no prominent names will be mentioned in pretrial motions until after Election Day. But cynics think the extension is a Justice Department excuse to explain inactivity. "While the jury's sitting they can keep saying the case is under investigation," one such cynic observes.

CHECKOFF CARDS

New members of Local 562 arriving on the job routinely receive political fund checkoff cards along with medical forms and other necessary work documents;

somehow, nearly every man becomes a "voluntary" contributor. Almost automatically, the job steward collects from the rank-and-file, the area foreman collects from the job steward, the general foreman collects from the area foreman and then it all goes into the local's political fund.

Steamfitters from Kansas, Illinois and other neighboring states working temporarily in Local 562's area have been similarly trained to contribute. Some simply regard the political payments as a cost of working in Mr. Callanan's bailiwick, and many don't distinguish between the union's treasury fed by dues and its theoretically independent campaign chest fed by the contributions.

In any event, the pint-sized union's political spending seems astonishingly high. In the years 1963 through 1966, the local is known to have ladled out $1,082,761 to candidates for Federal, state and local office, and even this figure may be incomplete. All told, 32 candidates for Congress received campaign funds in those years, Included, on March 1, 1966, was the first $5,000 of $13,000 the local contributed in 1966–67 to early-starting committees working for the reelection of Sen. Edward Long, Missouri Democrat; Mr. Long's current Senate term expires this year.

A look at Mr. Callanan's political operation suggests the variety of techniques being employed by contributors and candidates to keep secret the sources of much of the cash being spent for politicking this year.

Failure to report.—The easiest method is to ignore that part of the Corrupt Practices Act requiring groups that support Congressional candidates in more than one state to report income and spending. Mr. Callanan's political fund supports candidates in half a dozen states, but it doesn't report. Nonreporting national unions include the National Maritime Union.

Phantom collectors.—In theory, the money not reported by contributors should nonetheless show up in the reports filed by recipients. The law requires a candidate to disclose all the money given to him or solicited with his "knowledge and consent." Yet he can avoid identifying contributors by ignorance, feigned or real, of who's collecting on his behalf. Consequently, a mere half-dozen of the 32 candidates known to have received contributions from the Callanan fund reported the income, and in two of these instances the contribution was listed as having come not from Local 562 but from the parent union, the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada.

Testimonial dinners.—Steamfitters often attend (or at least contribute to) many such events raising funds for office-holders. Following Senate censure of Connecticut Democrat Thomas Dodd for keeping $116,000 raised at testimonial dinners, the term was shunned both by fund-raisers and donors. But now it's back in style.

Though unions and corporations can't contribute to campaigns for Federal office, no law prevents either from donating in the guise of no-strings testimonial gifts. Thus, most testimonial invitations carefully refrain from stating the candidate's intent to use the "gifts" for campaign purposes.

Collapsible committees.—At least once each year, Local 562 kicks in $1,000 or more to the Democratic Congressional Dinner Committee, a paper organization set up mostly to deflect prying eyes. It collects checks, divides receipts among the standing House and Senate Democratic campaign committees, then folds up.

Though the disclosure laws require the two standing committees to identify sources of income, those committees, in filing their reports, limit the identification to lump-sum receipts from the dummy dinner committee; individual contributors aren't named.

A similar technique enabled couples who paid $1,000 each last fall for tickets to the Democratic "President's Ball" to dance in anonymity; the sponsors refused even to put out a guest list.

It's not surprising that some in the Justice Department regard the Steamfitters local as a promising target for prosecution on charges of illegal political contributions. They think such a prosecution might help end lax enforcement, by Democratic and Republican Administrations alike, of laws governing political contributions. But the prosecutors' progress to date doesn't suggest stepped-up enforcement by any Government agency.

For almost a year, the Internal Revenue Service has been pursuing what one insider calls a "half-hearted" investigation of undercover corporate contributions to political candidates. (Like unions, corporations are prohibited from contributing to campaigns for Federal offices.) The agency suspects that some businessmen not only violate the ban but even seek to make such gifts tax-deductible. Accord-

ing to this theory, these businessmen get certain law firms or public relations firms to pad their regular bills by an extra amount that can be listed on tax returns as a business expense; the lawyers and PR men then contribute the amount of the overcharge to political candidates.

MECHANICAL CONTRACTORS ASSOCIATION OF NEW ORLEANS,
May 14, 1968.

Mr. ROBERT HARRIS,
Counsel, Senate Labor Subcommittee,
New Senate Office Building, Washington, D.C.

DEAR MR. HARRIS: Our Association would like to go on record as being strongly opposed to the current Industry Promotion Bill S. 3149 scheduled for hearings on May 21, 1968.

We have opposed this bill from its inception and made our feelings known to our Congressional Delegation by telegram on April 1, 1968.

Our Association believes this bill, if passed, would be detrimental to the interests of Construction Industry Management.

Cordially,

ANTHONY J. PONSETI,
Executive Secretary.

THE PLUMBING CONTRACTORS ASSOCIATION
OF METROPOLITAN ST. LOUIS,
May 10, 1968.

COMMITTEE ON LABOR AND PUBLIC WELFARE,
Mr. RALPH W. YARBOROUGH,
Senator, State of Texas,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: It is our understanding that Senate hearings on Industry Fund Bill S. 3149 are to be held May 21st., 1968. Many national groups will have an opportunity to testify as to the merits and deficiencies involved in this Bill.

I would like to take this opportunity, very briefly, to establish and clarify our position on this pending Bill. The comments contained in this memorandum represent those points of view of the Plumbing Contractors Association of Metropolitan St. Louis, Missouri.

For the record, the Plumbing Contractors Association is vehemently *opposed* to S. 3149.

There are many Industry Funds throughout the country. The only limitation now is that they may not be jointly administered by management and labor. It is this limitation that S. 3149 would remove.

Industry Fund monies are *contributed solely by management.* It is management's money, and decisions regarding its expenditure should be exclusively management's. Although S. 3149 stipulates such joint management of Fund will be permissive, we know as a practical matter, this will not be the case.

If Industry Funds are administered jointly by labor and management, in effect, labor will manage the funds. Management will be forced to agree with labor on their use, or face retaliation.

Further, if labor were permitted to jointly administer Industry Funds, it would carry with it a veto power whenever it disagreed with management on the use of such funds.

It is quite evident, by definition, an Industry Fund rather than encompassing an employer-employee relationship, concerns itself more with the relationship of employers to each other and with employers to the consuming public—responsibilities of management.

A union's function is to represent its members with respect to wages, hours, and working conditions. S. 3149 would extent the union's scope of interest to matters of advertising, research, promotion of Industry, and products.

S. 3149 is quite ambiguous with regard to product promotion. This ambiguity could even expose the employer to criminal responsibility.

S. 3149 could result in an unfair restriction of trade. The Bill specifically provides for product promotion. Our contractors normally use thousands of products and believe each product should stand on its own merits. To oppose a product

would be restrictive; to promote a product is the full responsibility of the manufacturer. As S. 3149 is written, pressure could be exerted by labor which could make or break a manufacturer.

We feel that passage of S. 3149 would mean the usurpation by labor of management's rights to operate and promote their Industry. Management Industry Funds are many times used to finance classes in salesmanship, public relations, sales promotion, and further courses geared to establish the efficiency of the contractor. Under S. 3149, labor might well insist that Industry Funds be used for purposes of their own choosing.

In summary, the Plumbing Contractors Association of Metropolitan St. Louis feels that this Bill is a direct and unjust invasion into management's prerogatives. We feel that possible passage of this Bill would create a breach between labor and management, a breach that absolutely does not exist at the present time in St. Louis. This Bill can, in no way, benefit labor-management relationships but conversely could, and would, jeopardize the great rapport and close association and cooperation that is now extremely evident.

Respectfully yours,

MILTON W. KOPFF, *President.*

MECHANICAL CONTRACTORS ASSOCIATION
OF NEW MEXICO, INC.,
Albuquerque, N. Mex., May 8, 1968.

Senator RALPH W. YARBOROUGH,
Chairman, subcommittee on Labor, Committee on Labor and Public Welfare, Old Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: Our Association wishes to be on record at any hearings as being strongly opposed to S. 3149. We consider contents of the bill as another usurpage by labor of legitimate management functions. Although the Bill is in a permissive measure, it would in reality be made mandatory through labor pressure tactics.

We offer the following reasons for you to oppose passage of S. 3149 and ask you to use your maximum influence to do so. Please, let management retain management functions. We respect proper union functions, and we resent legislation which does not realistically respect management functions. A union's function is to represent its members in matters of wages, hours, and working conditions. S. 3149 deals with matters beyond this scope.

Passage of S. 3149 would cause a tremendous increase in the number of labor disputes. At present, labor must assume its cost of arbitration proceedings, so few cases go to arbitration. Under terms of S. 3149, since *all* contributions to an Industry Fund are by management, and cost of abitration would be borne by the Fund, labor would have no responsibility and the entire burden for the cost of arbitration would fall on the employer. S. 3149 is an open invitation for labor to cause disputes and be paid for doing so.

Existing management administered Industry Funds are now working well in our industry. They have been a tremendous help in such matters as training management personnel, improving plans and specifications, advancing bid and construction methods and procedures, informing the public, and many other functions that management should do. S. 3149 would put an end to these very worthwhile projects.

We again respectfully request your influence and support to kill S. 3149.

Very truly yours,

W. D. ROSS,
Executive Director.

M. FARBMAN & SONS, INC.,
New York, N.Y., May 7, 1968.

Senator RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SIR: May I respectfully, but with great urgency ask your review of H.R. 15198 and S. 3149. These Bills are, literally pernicious in their effect in the very area where they claim to be beneficial and, to those of us who have had a pragmatic experience in the field of Joint Industry Boards and Promotion Funds, the Bills are almost comical in their irrelevancy to actual conditions.

I served for three years as the Chairman of a joint Labor-Management Industry Board and am now Chairman of an Industry Promotion Fund. I read the proceedings in the House of Representative of April 1, 1968, about H.R. 15198 and was shocked by the shallowness and, to my mind, the irrelevant proponet discussion. It was apparent that the entire action of "suspending rules" was due to the fact that hearings "in depth" would reveal the true nature of the Bill. And I might add, in view of the many important matters before the Congress, which affect the future course, if not the existence of our Country, the attempt for "suspension of rules", for such a Bill is simply incredible.

With this introduction, the facts from my own knowledge and experience are in order.

This Bill adds to the exemptions in Section 302 of the Taft-Hartley Act prohibiting contributions by employers to labor representatives except in 5 social benefit trusts including Pension, Welfare, Holiday and the like—clearly for the long range well being of union members in addiiton to take home pay. The new additional benefit trusts are monies for "Product Promotion" and "Interpretation of Collective Bargaining Agreements". Aside from the obvious incongruity of purposes with the basic five, there are serious prospects of abuses. The social benefit trust funds are clearly defined and circumscribed. The two new purposes are diffuse as to interpretation and elastic in extent. Under such circumstances, an agreement under collective bargaining including these two additional items of contributions by employers could divert funds from direct benefit to workers to a grey area subject to equivocal interpretation. Thus, since Federal Courts have held, under Taft-Hartley that all trustees of jointly administered funds are labor representatives irrespective of the fact that the employers trustees are selected by employers of their associations, serious consequences can result from well-meaning but challengeable direction of the two new joint funds. This is underscored by the simple fact that the Bill's stated purpose of "Product Promotion" is just inapplicable in the construction industry since "products" are what *manufacturers supply* and *promote* for *use* by construction contractors.

In contrast, Industry Promotion Funds now in existence contributed to and under the management of employers exist to upgrade trade practices and standards; to improve public awareness and acceptance—in brief, to get a larger share of the public spending dollar through understanding better work and an improving public image. This is historically a strictly management perogative—and today when there is a major job to be done in the fields of upgrading minority groups in the Construction Industry, a change from unilateral employer control of Promotion Funds to joint control will be looked upon with suspicion as a step backward, and deservedly so.

In this connection, I say to you out of my own work and knowledge, that Industry Promotion Funds represent a tool, perhaps the only tool for the Construction Industry in the private sector with sufficient cutting edge in the way of money, to create a dynamic process for participation in construction by the underprivileged minorities.

The Bills in question HR 15198 and S 3149, will certainly dull, if not obliterate this possibility. So at this time in our Nation's history, an affirmative vote carries grave implications.

Very truly yours,

M. Farbman & Sons, Inc.
Leonard X. Farbman.

M. J. Flaherty Co.,
Mechanical Contractors,
Boston, Mass., May 13, 1968.

Mr. Robert Harris,
Counsel, Senate Labor Subcommittee,
Room 4230, New Senate Office Building,
Washington, D.C.

Dear Mr. Harris: It is my understanding that Senator Yarborough, Chairman of the Senate Labor Subcommittee, has called for public hearings on S. 3149, Industry Promotion Bill.

I am a mechanical contractor doing considerable business in the New England area, a director of the Mechanical Contractors Association of Boston, and also chairman of the Mechanical Contractors Association Improvement Fund of Boston.

Wish to go on record as being definitely opposed to this bill as I do not believe it to be in the best interest of labor or management. If this bill were passed, I feel it would only widen the gap between labor and management.

Sincerely,

FREDERICK J. CASEY.

FLORIDA EAST COAST CHAPTER,
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,
West Palm Beach, Fla., April 8, 1968.

Senator RALPH W. YARBOROUGH,
Chairman, Senate Subcommittee on Labor,
Washington, D.C.

DEAR SIR: The 100 member firms of the Florida East Coast Chapter AGC urgently requests that you do everything within your power to prevent passage of S. 3149 and other related legislative bills which would amend Section 302 of the Taft-Hartley Act.

Any legislation of this type that might possibly receive your consideration for passage, would thoroughly disrupt all efforts which our industry is making to upgrade and improve its profession.

If you have any questions concerning this matter, please contact our national AGC office in Washington, D.C., or our chapter immediately.

Yours very truly,

BARKLEY S. HENDERSON,
Executive Manager.

MEMORANDUM TO THE SENATE SUBCOMMITTEE ON LABOR FROM THE FLORIDA WEST COAST CHAPTER OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA RE ITS OPPOSITION TO S. 3149, APRIL 16, 1968

This memorandum is submitted on behalf of the Florida West Coast Chapter of the Associated General Contractors of America, a non-profit Florida corporation affiliated with the national organization, with a membership composed of construction firms in a twelve-county area on Florida's west coast.

This Association is, and has been for many years, the recognized bargaining representative of employers engaged in building construction in the Florida West Coast area and currently has collective bargaining agreements negotiated by its labor committee with various unions in the building construction field. Since 1961 two or more of these agreements have contained provisions for an industry fund, management administered; at present, all agreements negotiated by this Chapter with the six basic construction crafts contain such a provision.

Because of this Chapter's successful experience with industry advancement program funds during the past seven years, it is believed that it can speak with authority on the advantages, benefits, and administration of such funds, as well as on the effect that the pending legislation, S. 3149, might have upon these funds and the programs which they finance.

The Florida West Coast Chapter of A.G.C. was one of the first areas in the country in which an Industry Advancement Program was established by general contractors to finance certain broad objectives for their benefit and at their expense. As conceived by these contractors, the funds are entirely management funds: contributions are made solely by employers, to an employer association, for employer purposes. That these programs benefit the industry as a whole, including the labor unions and their members, is, of course, also true.

The collective bargaining agreements under which the funds are established state clearly that "the Union shall have no control, power, or influence in any manner whatsoever over and upon the said Industry Advancement Program Fund; and any disbursements therefrom shall be at the discretion of the Association." That after seven years the union representatives and membership still feel that these funds are well administered is witnessed by the fact that provisions for the funds were included, without union opposition, in agreements with seven union locals negotiated in 1967 and 1968, representatives of both labor and management at the bargaining table recognizing that the purposes for which the funds were established were in the area of management's concern and that the funds were being administered by management for the common good.

As stated in the collective bargaining agreements, the purpose of the funds is to pay, among other things:

1. The expense incurred by management in conducting a public relations program for the benefit of all contractors engaged in building construction in the area;

2. The expense incurred by management in promoting stable relations between labor and management;

3. The expense incurred by management in collective bargaining on an industry-wide basis for the benefit of all building contractors in the area;

4. The expense incurred by management in the maintenance of facilities for the arbitration of disputes and the adjustment of grievances;

5. The expense incurred by management in administering health and welfare and pension funds for the various crafts employed in the industry;

6. The expense incurred by management in creating and operating other agencies for the benefit of the building construction industry as a whole, such as schools for superintendents of construction and other advisory personnel;

7. The expense incurred by management in standardizing owner-contractor contracts and specifications and setting up machinery to bring about cooperation between architects and contractors and eliminate disputes and disagreements;

8. The expense incurred by management in the promotion of safety programs;

9. The expense incurred by management in research into new methods and materials for use in the industry; and

10. The expense incurred by management in maintaining apprenticeship programs in the industry.

The only restrictions on the use of the funds as provided in the agreements are that "there is specifically excluded from the purpose of the Industry Advancement Program the use of any of its funds for lobbying in support of anti-labor legislation and/or to subsidize contractors by the payment of monies to them from the fund in connection with legal work stoppages or strikes against such contractors."

While the language of S. 3149 indicates that its provisions apply to a product promotion program only and/or the establishment of a joint committee or joint board to interpret provisions of collective bargaining agreements, it should be made very clear that although funds such as those administered by the Florida West Coast Chapter, A.G.C., are not product promotion plans as such, since we have no "product" in the sense of a special building material to promote, nevertheless the bill has serious implications for the construction industry; and we oppose its enactment for the following reasons:

1. The term "product" is not defined nor limited in meaning and may be construed by the courts to include the activities comprehended in the purposes of the industry funds.

2. It is a first step towards compulsory arbitration at management's sole expense, inasmuch as the bill proposes that the monies to defray the expense of "interpreting of provisions of collective bargaining agreements and to resolve and determine issues arising from disputes regarding provisions of collective bargaining agreements," though contributed by management alone, shall be disbursed at the direction of a joint committee or board.

3. Its provisions, now permissive, may become mandatory; it is a foot-in-the-door to joint control of all industry funds, giving the unions equal voice in the disbursement of funds established by management for management's purposes, supported by management contributions, and concerned with wages, hours, and working conditions only insofar as management uses its own funds for the improvement of industry programs such as safety and manpower training.

4. The bill is discriminatory in that it applies to the construction industry alone. If its provisions are in the public interest as applied to the construction industry, it is clearly within the right of those in this industry to ask if it is not also in the public interest for unions to be given the right to administer jointly with management all such funds, in whatever industry they may appear.

The fact that the activities for which these funds are expended lie within the area of management interest, experience, and know-how may be illustrated by examples of a few of those sponsored by this Chapter through its industry funds.

1. *Seminars for Management Personnel* on taxation and accounting; the Critical Path Method as a scheduling technique to improve the coordinating and planning of the parts and components associated with modern structures; the use of computers; insurance and bonding; provisions of a new state licensing law

for general contractors and requirements for the competency examination provided for therein.

2. *Publication of an Area Industry Directory* listing, for the twelve-county area covered by this Chapter, building officials, architects and engineers, and labor unions and representatives; and containing licensing requirements, collective bargaining agreements, and wage scales for the area.

3. *Work with Building Departments* of cities and counties within the Chapter area on evaluation of the Building Departments, building codes, and qualifications for contractors doing public work.

4. *Foreman Training Program.* This program, though obviously of interest and value to both employer and employee, has required the organizing and administrative experience of management to put into effect. To plan the content of the course, arrange for competent instructors, supervise the clerical details of registration, attendance record keeping, etc., and to provide suitable speakers for many sessions of the thirty-week program has been management's responsibility. The employee's part has been an enthusiastic acceptance of the program, making necessary two classes, each twice the size of the one class originally planned, and creating a waiting list of an equal number of applicants for a second program to be started in September.

In the light of the facts presented above, we respectfully request that this committee withhold its approval from S. 3149 and leave to management control in those areas which are logically and historically management prerogatives and in which the rank and file of union membership have neither the interest nor the knowledge necessary to share the problems of initiation and administration; and leave to joint administration those areas affecting wages, hours, and working conditions, areas in which the union member has a strong and legitimate interest and in which he is most knowledgeable.

NORTHEAST LOUISIANA CONTRACTORS ASSOCIATION, A.G.C., INC.,
Monroe, La., April 8, 1968.

Hon. RALPH W. YARBOROUGH.
U.S. Senator,
Wahington, D.C.

DEAR SENATOR YARBOROUGH: We understand that hearings are scheduled in the near future by the Senate Labor Subcommittee on S. 3194, a bill which would permit joint union-management administration of programs not now covered under National Labor Relations Act of 1947.

Our association, which represents general contractors in the Fifth Congressional District of Louisiana, is concerned over the possible effects of this legislation, if enacted. In short, we feel this bill would not serve the public and, therefore, should not be approved by the Senate Labor Subcommittee.

One section of the bill, as we appreciate it, would allow labor organizations to bargain for the establishment of a program requiring management to completely underwrite the costs involved in resolving disputes arising under the collective bargaining agreement while labor organizations, with no financial contribution whatsoever, would have an equal voice in deciding how these funds would be spent. This absence of financial participation could spur labor toward promoting frivolous cases, opulent facilities and protracted sessions. The current policy, which we feel should not be changed, is for management and labor to equally share the costs of resolving disputes.

Our association administers an Industry Advancement Program. It is used for public relations projects for the benefit of the entire industry; publicizing career opportunities available for young people in all phases of construction; providing educational programs for construction management personnel; defraying management's costs of administration, jointly with representatives of labor, programs which include apprenticeship, pension and health/welfare; paying expenses incurred in the maintenance of a plan room and other facilities to serve the industry; improving safety programs; defraying management's costs in negotiating collective bargaining agreements; and working with architects, engineers and other persons for the betterment of the industry.

None of these programs deal with wages, hours and working conditions. Thus, they are not in the realm of legitimate union interest.

To allow labor to jointly administer an industry advancement program such as ours is to invite chaos.

Conceivably, partisan labor representatives, each with the jurisdictional ambitions of his own union at heart, would stymie and deadlock the aims of the management representatives who are seeking to advance the industry, not just the particular section with which a labor representative may be interested.

After all, these are management functions we are talking about. To reverse the coin, should management have the right to assist in administration of union affairs?

The bill talks about product promotion funds, but we are concerned that labor representatives could misinterpret this to include industry promotion funds. While we are foursquare against the bill, we feel it should be clarified with a definition of the word "product."

It is our contention that "product" for the purpose of this legislation be defined "as any tangible material physically incorporated in buildings, facilities or other improvements to realty." Such a definition, we feel makes clear that the industry advancement programs referred to above are not covered in the scope of S. 3194.

To reiterate our position, we feel that S. 3194 is not in the public interest and should not be enacted.

Yours truly,

ED FREEDMAN,
Executive Secretary.

MIAMI VALLEY SHEET METAL CONTRACTORS ASSOCIATION,
Dayton, Ohio, April 5, 1968.

Hon. RALPH YARBOROUGH,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR MR. YARBOROUGH: The Miami Valley Sheet Metal Contractors' Association, which is affiliated with the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), would like you as a member of the Senate Labor and Public Welfare Committee to be aware of our reasons for opposing Senate Bill 3149. We feel these views are representative of management views in general and should be seriously considered by you when considering this legislation.

Industry funds with which we are concerned and involved are designed to promote better conditions within the sheet metal industry for not only those directly involved, including labor, but also for those indirectly involved, such as, architects, engineers, owners, governmental officials, and the general public. Much of the work done through existing industry fund facilities with these groups not directly involved in the industry would have been impossible or at least greatly thwarted by direct involvement by labor. Although not justifiable in in all cases, labor involvement carries with it a stigmatic impression which in great measure tends to alienate these non-directly involved groups. Such stigmatic impressions are the result of current sensationalistic journalism concerning labor, coupled with the militant historical background of the labor movement. As I have stated, these impressions may not be totally justifiable, however, they do exist and would be contributive influences that could destroy the effectiveness of many worthwhile programs presently being promoted by unilaterally administered and accepted management industry funds. Why then should Congress subject these advancement programs to probable extinction through enactment of this unnecessary legislation.

This legislation, if designed to insure labor of equal benefit from industry promotion, is again unnecessary due to the fact that one of the primary goals of industry funds is apprentice and journeyman training programs. Such programs are of direct benefit to labor. Labor, also, benefits directly through other industry fund programs with emphasis on better communications between architects, engineers, etc., through the increase of work and reduction of jurisdictional disputes which result from better designed systems and better prepared specifications.

Inactment of Senate Bill 3149 would make negotiations of industry funds mandatory in fact, if not in law. Management's concern with and desire for industry funds would weaken their position at the bargaining table even more than is presently true through the labor tactic of using the industry fund as a means for obtaining higher wage increases and/or more costly conditions in their contract. If economically feasible bargaining agreements are to become a reality in

the construction industry, it is mandatory that action be taken to strengthen management's position in collective bargaining. This legislation would tend to weaken management's position.

Industry fund contributions are strictly employer contributions. Management has never asked for nor do they expect a voice in the administration of dues collected by labor for their own purposes, and certainly, labor should not have a voice in the day-to-day administration of management monies. It is true that industry funds are tied to collective bargaining agreements as a means of "equal taxation" of employers and that labor has been helpful in enforcing all contract provisions, it is also true that in many areas dues paid to labor unions are automatically deducted by the employer on a check-off basis. In these same areas the employers have not requested and do not desire joint administration of union dues.

Industry funds are management dues to the industry from which they derive their livelihood. These dues are to be used to better conditions in the industry on behalf of the total industry. Management has adopted the position that promotion of the total industry includes labor and, as mentioned, specific programs are in operation in this regard.

This legislation would, also, place labor in the position of utilizing industry fund monies for administrative financial support of local unions, superseding membership dues, on the basis that local unions are a collective bargaining enforcement agency.

This legislation is detrimental to our industry and we urge you to oppose it in every possible way.

Respectfully yours,

J. ROBERT ROACH,
Executive Secretary.

RESILIENT FLOOR COVERING,
CENTRAL COAST COUNTIES,
San Jose, Calif., April 8, 1968.

Subject: Opposition to S. 1349.

Hon. RALPH W. YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR MR. YARBOROUGH: Please be advised that the Resilient Floor Covering Association, Central Coast Counties, is opposed to bill S. 1349, now pending before the Labor and Public Welfare Committee.

This bill seeks to amend Section 302(c) of the Labor-Management Relations Act of 1947, to permit employer contributions for joint industry promotion of products, or a joint committee empowered to interpret provisions of collective bargaining agreement.

At present, the law permits management to be solely responsible for, and to contribute to funds for industry promotion, etc. The passage of this bill would permit labor to have a say in the administration of these funds, which have been traditionally a management prerogative.

Labor already has a strong voice in the conduct of the construction industry. We oppose any law which would permit that voice to become stronger, or which would upset the current balance which has been achieved.

We respectfully request that you oppose passage of this bill. Thank you for your consideration.

Your very truly,

BROOKS T. MANCINI, *President.*

NATKIN & CO.,
Omaha, Nebr., May 10, 1968.

Subject: Hearings on S. 3149 Industry Promotion Bill.

Mr. ROBERT HARRIS,
Counsel, Senate Labor Subcommittee,
New Senate Office Building,
Washington, D.C.

DEAR MR. HARRIS: We understand that hearings have been set for May 21, 1968, for S. 3149, Industry Promotion Bill, which is of extreme importance to

those of us engaged in the contracting business and most decidedly, those of us engaged in the mechanical construction business.

Our firm, Natkin & Company, operates from thirteen major locations from St. Louis to Santa Clara and in several of these locations we are participants in the Mechanical Contractors Association of America, through their local groups, who have labor contracts creating industry funds. These funds are administered either by the local MCAA Chapter or a separate organization of contractors. In our opinion, it would be highly detrimental to the industry if representatives of organized labor participated in the administration of these industry funds.

In the first place, any objectively of industry promotion by business men who know their business and know how to promote that business, would be nullified if organized labor was permitted to share in the administration. All organized labor is directed, as far as policy is concerned and in many actual practices, from their headquarters in Washington, D.C., since all of the construction unions, for practical purposes, are headquartered there. Recently, if you have noticed the extremely high rises in the wage rates of construction unions, you will understand the tremendous power of organized labor in the construction industry. The principal reason these large wage increases are ageed to is simply because it is almost futile for business men engaged in the construction industry to oppose any demands of these unions when they are so strongly backed by the United States Government and the NLRB in almost every instance of dispute.

Business and sales promotion, whatever it may be, has always been one of management decisions of the business man or employer. Money spent in this field must be objective to be effective and in this particular instance, must promote the industry for which these funds are accumulated.

Were the unions to have representatives deciding upon the manner in which industry promotion funds are spent, there would be at least one inevitable result; the manner in which the funds were spent would immediately become a subject for bargaining and the practicality of the issue would be destroyed, except as an additional fringe benefit to some of the union's representatives: not truly representative of business itself, but as a member of an organized labor group reporting directly to a Washington headquarters.

Any difference of opinion could be enforced by the union by means of strike action with the presently, almost inevitable result that with or without business judgment applied, the union would have its way.

Since, upon the average, our company employs in excess of 3,500 union mechanics every day, we know whereof we speak.

Very truly yours,

HENRY KLEINKAUF, *President.*

GLANZ & KILLIAN CO.,
Detroit, Mich., May 10, 1968.

Re S. 3149—Industry Promotion Fund Bill.

Mr. ROBERT HARRIS,
Counsel, Senate Labor Subcommittee,
New Senate Office Building, Washington, D.C.

DEAR MR. HARRIS: I understand that public hearings on this bill to legalize joint administration of product promotion funds, etc. is set for May 21.

The language of this bill is such that it sounds like management and labor should be all for this thing together. Naturally, both are interested in product promotion that expands their industry to mutual benefit. BUT industry promotion is a horse of another color.

Here—this is where management uses this fund to promote the industry the way management wants it done. Examples of this are some of the things we've done with the fund here in Detroit—Seminars to train foremen (who are members of the union) to also look after the best interest of the contractor, seminars on safety, first aid courses for field personnel, management seminars on cost control and estimating, etc. The involvement of labor into this sort of thing would be chaotic. Accordingly, I want to go on record that I am in opposition to this bill. Please make such a notation.

Thank you for your consideration.

Yours very truly,

E. F. GLANZ.

SHEET METAL CONTRACTORS ASSOCIATION, INC.,
Dallas, Tex., May 6, 1968.

Hon. RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: We the undersigned independent businessmen of your state and City of Dallas, in the Sheet Metal Industry are experiencing a growing concern relative to you, our spokesman in the United States Senate, sponsoring a bill which is highly detrimental to our businesses and industry.

Senate Bill No. 3149 which we are informed you have sponsored, we consider of high importance to our industry.

We are enclosing herewith numerous objections why this bill should not be passed and how it would injure the present wholesome relation between management and labor which we enjoy in this area in our industry.

Sincerely,

Robert E. Allison, American Sheet Metal Co., 601 First Ave., Dallas, Tex.; Ray Claxton, Ray Claxton Co., 5430 Redfield, Dallas, Tex.; Marvin H. Brown, Dacco Sheet Metal Co., 1708 Cedar Springs, Dallas, Tex.; A. C. Horn, Jr., A. C. Horn & Co., 110 Leslie St., Dallas, Tex.; Boyd H. Goodman, Burden Brothers, Inc., 1321 Plowman Ave., Dallas, Tex.; E. C. Orrick, Jr., Commercial Sheet Metal Works, 3113 Oak Lane, Dallas, Tex.; S. E. Ammons, Farwell Corporation of Texas, 300 S. Buckner Blvd., Dallas, Tex.; L. W. Higgins, L. W. Higgins Co., 2521 Gilmer St., Dallas, Tex.; W. W. Jones, Jet Sheet Metal Co., 3736 A Kalloch, Dallas, Tex.; Edgar Weaver, Matthews Services, Inc., 2124 Olive St., Dallas, Tex., Bruce Ragsdale, Bruce Ragsdale Sheet Metal Co., 5323 Tex Oak, Dallas, Tex.; George G. Goff, Republic Sheet Metal Co., 5131 Cash Road, Dallas, Tex.; A. H. Zilbermann, Metalair Engineers, 9731 Denton Drive, Dallas, Tex.; Gilbert W. Dorsett, Keetch Metal Works of Dallas, 2003 Record Crossing Road, Dallas, Tex.; Grady Argenbright, Argenbright National Sheet Metal Co., P.O. Box 20832, Dallas, Tex.; Ed Ragsdale, Ed Ragsdale Sheet Metal Co., 1746 Rhome, Dallas, Tex.; Al H. Parker, United Metal Fabricators, Inc., 1019 Slocum, Dallas, Tex.

PREPARED STATEMENT OF THE SHEET METAL AND AIR CONDITIONING CONTRACTORS' ASSOCIATION, INC., OF DALLAS, TEXAS

WHY SENATE BILL 3149 SHOULD BE DEFEATED

1. There are many industry funds throughout the United States at present. The only limitation now is that they may not be jointly administered by management and labor. It is this limitation that S. 3149 would remove.

2. Industry fund monies are contributed solely by management. It is management's money and decisions regarding its expenditure should be exclusively management's.

3. If industry funds are administered jointly by labor and management, in effect, labor will manage the funds. Management will be forced to agree with labor on their use, or face retaliation.

4. If labor were permitted to jointly administer industry funds, it would carry with it a veto power whenever it disagreed with management on the use of such funds.

5. An industry fund, rather than encompassing an employer-employee relationship, concerns itself more with the relationship of employers to each other, and with employers to the consuming public—which are the responsibilities of management.

6. A union's function is to represent its members with respect to wages, hours and working conditions. S. 3149 would extend the union's scope of interest to matters of advertising, research, promotion of industry, and products.

7. S. 3149 is ambiguous with regard to product promotion. This ambiguity could even expose the employer to criminal responsibility.

8. S. 3149, if passed, will create a tremendous increase in the number of labor disputes going to arbitration. At the present time, the cost of arbitration proceedings is borne by each side, with the result that relatively few cases go to arbitration. Under S. 3149, the cost would be borne by the industry fund, with the result that all cases might go to arbitration. Labor would have no responsibility. The entire burden for the cost of arbitration would fall on the employer.

9. S. 3149 could result in an unfair restriction of trade. The Bill specifically provides for product promotion. Our contractors normally use thousands of products and believe each product should stand on its own merits. To oppose a product would be restrictive; to promote a product that is the responsibility of the manufacturer. Under S. 3149, pressure could be exerted by labor which could make or break a manufacturer.

10. The passage of S. 3149 would mean the usurpation by labor of management's right to operate and promote their industry. Management industry funds are sometimes now used to finance classes in salesmanship, for example. Management feels that such classes benefit not only the contractor but labor as well. Under the Bill, labor might well insist that industry funds be used for purposes of their own choosing.

11. S. 3149 would place management in an untenable position with labor. Management, instead of being permitted to promote their industry to the best of their ability, would be subject to the will of labor. If management failed to agree with labor on the use of the industry funds, labor could force their will by economic reprisals.

12. Under S. 3149, management would be financing labor's programs. S. 3149 is said to be permissive, not mandatory, but labor would undoubtedly insist on negotiating a joint industry fund as it would mean that management would have to pay for programs which are currently being financed by labor. Management's refusal to negotiate an industry fund would undoubtedly lead to strike for better wages, hours, and working conditions.

13. Passage of S. 3149 would mean an increase in building costs. Joint management of industry funds would undoubtedly mean an increase in the costs to the contractor which would have to be passed onto the consumer. Such costs might well increase the cost of the medium priced single dwelling by as much as $500. In fact the cost of financing all arbitration proceedings might well reach that figure.

SHAKER AIR CONDITIONING CO.,
Cleveland, Ohio, May 6, 1968.

Hon. JACOB K. JAVITS,
Senate Committee, Labor and Public Welfare, Senate Office Building, Washington, D.C.

SIR: It is already in our agreement that should the bill S. 3149 pass, the union will immediately have representation on our Industry Fund Plan. If we had not or would not agree to it, we would not have had an Industry Fund.

Very truly yours,

CUYAHOGA COUNTY SHEET METAL
CONTRACTORS ASSOCIATION,
ALVIN MINTZ, *President.*

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, D.C., March 21, 1968.

Hon. RALPH R. YARBOROUGH,
Chairman, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: We understand that your Subcommittee may consider S. 3149, a bill to authorize lawful employer contributions to joint industry promotion funds under the Traft-Hartley law. This legislation also would permit lawful financial support of joint committees within the industry to interpret provisions in labor agreements.

The National Association of Home Builders, representing over 48,000 members of the home building industry throughout the Nation, has a significant interest in this subject. This Association's National Labor Committee reviewed the subject covered by S. 3149 and has made the following recommendations.

"That members of the industry vigorously oppose any effort to make the negotiation of so-called promotion or industry advancement funds a mandatory subject of collective bargaining between labor and management. Where such funds are to be created, consideration should be given to establishing the programs on a unilateral employer basis, free from outside influence or control."

NAHB believes that an industry promotion or advancement fund, whether established unilaterally or under joint sponsorship with a labor organization, is solely a matter for voluntary industry action at the local level.

We would be opposed to the imposition of any new federal controls or restrictions over the scope or operation of such funds.

Accordingly, we urge that every consideration be given to retain in S. 3149 the proviso that no labor organization or employer shall be required to bargain on the establishment of any such program, committee or board, and that refusal to do so shall not be considered an unfair labor practice under the Taft-Hartley law.

We appreciate the opportunity afforded to have this statement included in the printed hearings record of the Subcommittee on this legislation.

Sincerely,

JOHN J. RILEY,
Director of Labor.

QUINT-CITIES HEATING, AIR-CONDITIONING,
AND SHEET METAL CONTRACTORS,
Bettendorf, Iowa, April 2, 1968.

Senator RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: In January of 1963 contractors employing members of Local #91 Sheet metal workers began contributing money to the Quint-Cities Industry Fund. Each firm was taxed .05 per man hour worked as an effort to equalize payment. The local monies are expended every year on such items as apprenticeship training, journeymen training, management training, code studies, advertising, monthly information bulletins to the people in the sheet metal industry and the creation of product and equipment manuals. These programs are entirely supported by contractor assessments in our area.

The contractors have in the past displayed an interest in upgrading their trade, they have soundly defeated the advocates of the old cliche "Let the buyer beware" by implementing a rigidly enforced code which minimizes the success of the floating con artists.

The Joint Industry Fund Bill S–3149 robs management of their opportunity to use their own digression in establishing priorities and forces them to relinquish their role as progressive pace setters in their own industry.

The business agents of the Quint-Cities locals have not lobbyed for the passage of this bill. The attitudes of both management and labor concerning Industry Funds is excellent.

It is true that the existence of the Industry Fund is tied in with the contract but this still does not justify joint administration of the funds. Dues check off systems for the unions are tied into the contract but it would be ridiculous for management to attempt to assist the union in the administration of *their money.* The same reasoning applies to the unions in their desire to run the Industry Fund operation. Industry Fund money is management's contribution to better the entire industry. Employees contribute nothing in the way of time or finances to its success or failure.

Passage of the Industry Fund Bill will cloud the issue and in more than principle weaken management's position at the bargaining table. Much more than union intervention threatens this Multi-Billion dollar industry. A closer analysis indicates that rising construction labor costs will widen the gap between American needs for building versus what can be financially feasible.

I deplore the tactics used in the House when they bypassed the Rules Committee in an effort to railroad passage of this sorry bill. The instigators took advantage of the confusion of our times to surprise the Representatives who were undoubtedly absorbed in more serious matters.

It is indeed scandalous to waste the lawmakers time in these hours of pressing social, economic and military problems. But then again this is an opportune time for the rioters to pilfer and plunder and catch their fellow legislators unaware.

I urge you table discussion on this bill because it does not merit any consideration. Thank you for your consideration.

Sincerely yours,

RICHARD Q. DAVISON,
Executive Vice President.

SMACNA PUGET SOUND, INC.,
VENTILATING CONTRACTORS DIVISION,
Seattle, Wash., April 17, 1968.

Senator RALPH YARBOROUGH,
Senate Committee, Labor and Public Welfare,
Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: As manager of the Sheet Metal, Air Conditioning Contractors Association here in Washington, the presentation of Senate Bill S. 3149 disturbs me and my member contractors greatly and we want to express a few of our objections to this Bill.

First, a union's function is to represent its members with respect to wages, hours and working conditions. S. 3149 would extend the union's scope of interest to matters of advertising, research, promotion of industry and products. Industry fund contributions should be administered by management in the same manner union dues are administered by the union officials and members.

I would also like to point out that each industry fund trust agreement provides that the fund shall *not* be used for antiunion activities.

S. 3149, if passed, will create a tremendous increase in the number of labor disputes going to abritration. At the present time, the cost of arbitration proceedings is borne by each side, with the result that relatively few cases go to arbitration. Under S. 3149, the cost would be borne by the industry fund, with the result that all cases might go to arbitration. Labor would have no responsibility. The entire burden for the cost of arbitration would fall on the employer.

An industry fund, rather than encompassing an employer-employee relationship, concerns itself more with the relationships of employers to each other, and with employers to the consuming public which are the responsibilities of management.

With these points in mind, I would like to enlist your support to our industry's objections to this bill to assure the protection of one of the few remaining management prerogatives. We believe this is certainly in the best interest of the general public.

Respectfully yours,

JERRY GRIFFIN,
Executive Secretary.

GENERAL BUILDING CONTRACTORS ASSOCIATION, INC.,
Philadelphia, Pa., April 25, 1968.

Hon. WAYNE MORSE,
Senate Subcommittee on Labor,
U.S. Senate, Washington, D.C.

DEAR SENATOR MORSE: This Association, which represents 250 contractors in the Philadelphia Five-County area, strongly opposes S. 3149, which would permit unions an equal voice with management in the administration of construction industry product promotion funds.

First, since the bill does not define "product," it could be misconstrued by unions to permit an equal voice in administering industry promotion funds, great numbers of which now exist throughout the country, administered and supported solely by management, and which do not promote any building material. This Association administers one of the oldest such funds in the country. Its activities are typical of these funds. They carry on management's programs in public relations, market development, research into new methods and materials, relations with clients, architects, engineers and subcontractors, and pay costs of management's representatives in negotiating and administering collective bargaining agreements and serving as management trustees on joint welfare, pension and apprentice training boards. Such misconceptions on the part of unions as to the bill's application would increase labor-management disputes and be detrimental to the widespread beneficial results presently realized from the operation of such funds.

Turning to product promotion funds to which the bill does apply, such funds are supported entirely by management contributions and are administered by management for purposes which have traditionally been considered as management purposes. The interest of unions in the activities of these funds, such as the employers' research programs, public relations programs, and relations with clients, architects, engineers and subcontractors, is not only remote, but

often adverse to the employers'. Activities which are aimed at increasing productivity and reducing costs may be contrary to the union's wish to increase its membership or instead use the funds for programs directly benefitting its members.

The mere fact that such funds are provided for in a collective bargaining agreement is no more reason for unions to administer them jointly with management, than for management to administer with unions the dues check-off also provided for through the collective bargaining agreement.

Passage of such legislation could impel unions, in great numbers, for reasons of competition and prestige, to demand creation of such funds from unwilling employers. The result would be an increase in building costs as tremendous amounts of money are spent on unnecessary uneconomic publicity and promotion by various industry segments, each offsetting the other. Jurisdictional disputes would increase, and a new area of labor-management dissension be created. The non-mandatory provision in the bill would provide no actual protection since unions in negotiations could merely trade off increased mandatory issues for management agreement to this non-mandatory demand.

Section (b) of S. 3149 would permit a jointly-administered fund through which management would pay the entire cost—including the union's share—of adjusting disputes arising under the labor contract. In addition to the unfairness of this, it would result in an increase in the number and severity of labor disputes, which are now kept at tolerable levels by the fact that the union must pay its own way.

For all of the foregoing reasons, S. 3149 would be extremely harmful to the construction industry and against the public interest, and we strongly urge your opposition to its passage.

Very truly yours,

HARRY P. TAYLOR,
Executive Director.

LOS ANGELES AREA CHAMBER OF COMMERCE,
Los Angeles, Calif., May 1, 1968.

Hon. RALPH W. YARBOROUGH,
Chairman, Subcommittee on Labor,
U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: The Board of Directors of the Los Angeles Area Chamber of Commerce opposes those portions of the identical Bills HR 15198, HR 14736 and S 3149 which would amend Section 302(c) of the Labor-Management Relations Act, 1947, by legalizing employer contributions to a joint industry promotion program to defray expenses for product research and development and product promotion.

The Chamber is principally opposed to these portions because:

1. The expenditure of management's money, which is the sole contribution to industry promotion funds, should be the exclusive decision of management.

2. Funds jointly administered by labor and management would result in management loss of control, and instead of being permitted to promote their industry products to the best of their ability, management would be forced to agree with labor on the use of the funds or face economic retaliation.

3. Each product should stand on its own merits. It is the responsibility of the manufacturer to promote his own product, and opposition to a product through the joint fund could result in an unfair restriction of trade. Pressure exerted by labor could break a manufacturer.

And finally, the Chamber emphasized opposition because joint management-labor promotion funds would lead to union disputes promoting rival products, increased construction costs, and definitely result in an invasion of management prerogatives.

We urge your committee support of the Chamber's recommendation that these portions of the Bills be deleted.

A copy of the Board Report is enclosed.

Very truly yours,

ROBERT L. GORDON, *President.*

LOS ANGELES CHAMBER OF COMMERCE CONSTRUCTION INDUSTRIES COMMITTEE
REPORT TO BOARD OF DIRECTORS, APRIL 25, 1968

SUBJECT: CONSTRUCTION INDUSTRY FUND BILLS H.R. 14736, H.R. 15198, AND S. 3149

Recommendation

The Construction Industries Committee recommends that the Board of Directors of the Los Angeles Area Chamber of Commerce oppose that portion of the Construction Industry Fund Bills H.R. 14736, H.R. 15198 and S. 3149 (Identical Bills) which would amend Section 302 of the Taft-Hartley Act by legalizing employer contributions to a joint industry promotion program to defray expenses for product research and development and product promotion.

What the bills would do

These Bills would permit construction industry employer contributions to a trust fund for joint industry promotion of products and for joint labor contract committees empowered to interpret provisions of collective bargaining agreements and to resolve disputes over the terms of the agreement.

Statement

Under current Taft-Hartley rules, Section 302 bars employer payments to union representatives except for certain listed payments, such as dues checkoffs and payments to specified funds such as health and welfare funds. Court decisions have reaffirmed the prohibition of employer payments to promotion funds that are jointly administered—and recent court rulings have taken similar positions against employer payments to contract interpretation committees.

There are many industry funds throughout the United States. The only limitation now is that they may not be jointly administered by management and labor. It is this limitation that H.R. 14736, H.R. 15198 and S. 3149 would remove.

Industry fund moneys are contributed solely by management. It is management's money, and decisions regarding its expenditure should be exclusively management's.

If industry funds are administered jointly by labor and management, in effect, labor will manage the funds. Management will be forced to agree with labor on their use, or face retaliation.

If labor were permitted to jointly administer industry funds, it would carry with it a veto power whenever it disagreed with management on the use of such funds.

An industry fund, rather than encompassing an employer-employee relationship, concerns itself more with the relationship of employers to each other, and with employers to the consuming public—responsibilities of management.

A union's function is to represent its members with respect to wages, hours, and working conditions. H.R. 14736, H.R. 15198 and S. 3149 would extend the union's scope of interest to matters of advertising, research, promotion of industry, and products.

H.R. 14736, H.R. 15198 and S. 3149 are ambiguous, with regard to product promotion. This ambiguity could even expose the employer to criminal responsibility.

Under H.R. 14736, H.R. 15198 and S. 3149 there will be a tremendous increase in the number of labor disputes going to arbitration. At the present time, the cost of arbitration proceedings is borne by the loser, with the result that very few cases go to arbitration. Under H.R. 14736, H.R. 15198 and S. 3149 the cost would be borne by the industry fund, with the result that all cases would go to arbitration. Labor would have no responsibility—the entire burden for the cost of arbitration would fall on the employer.

HR 14736, HR 15198 and S 3149 could result in an unfair restriction of trade. They specifically provide for product promotion. Our contractors normally use thousands of products and believe each product should stand on its own merits. To oppose a product would be restrictive; to promote a product is the responsibility of the manufacturer. Under these bills, pressure could be exerted by labor which could make or break a manufacturer.

The passage of HR 14736, HR 15198 and S 3149 would mean the usurpation by labor of management's right to operate and promote their industry. Management industry funds are sometimes now used to finance classes in salesmanship, for example. Management feels that such classes benefit not only the contractor, but labor as well. Under HR 14736, HR 15198, and S 3149 labor might well insist that industry funds be used for purposes of their own choosing.

HR 14736, HR 15198 and S 3149 would place management in an untenable position with labor. Management, instead of being permitted to promote their industry to the best of their ability, would be subject to the will of labor. If management failed to agree with labor on the use of industry funds, labor could force their will by economic reprisals.

Under HR 14736, HR 15198 and S 3149, management would be financing labor's programs. Although the Bills are permissive, not mandatory, labor would undoubtedly insist on negotiating a joint industry fund as it would mean that management would have to pay for programs which are currently being financed by labor. Management's refusal to negotiate an industry fund would undoubtedly lead to a strike for better wages, hours, and working conditions.

Passage of HR 14736, HR 15198 and S 3149 would mean an increase in building costs. Joint management of industry funds would undoubtedly mean an increase in cost to the contractor which would have to be passed on to the consumer. Such costs might well increase the cost of a medium-price, single dwelling by as much as $500. In fact, the cost of financing all arbitration proceedings might well reach that figure.

Even though many construction industry associations base their main opposition to the Bills on the provisions that permit joint employer contributions to joint contract interpretation committees the Construction Industries Committee emphasizes opposition only to that portion which permits joint labor-management handling of construction industry product promotion funds, principally because such a program would lead to union disputes promoting rival products, increased construction costs, and would be an invasion of management prerogatives.

WM. J. DONOVAN CO.,
Philadelphia, Pa., April 24, 1968.

Re joint administration of industry funds—S. 3149.

Hon. RALPH W. YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: As you know, this legislation has again been introduced. We believe it is highly controversial to permit local unions to jointly administer a fund which has been provided by contributions made strictly by management. As contractors, we oppose this bill most strongly.

The Industry Fund was created to promote better construction methods. New construction concepts will create more opportunities for skilled craftsmen. Our local Industry Fund sponsors advanced training schools for union journeymen who wish to improve their skills, and we, as contractors, spend much time and energy in committee work setting up these programs. In this Association, we have bargaining agreements with three local unions. Can you possibly imagine the chaotic conditions which would exist in the joint administration of a fund, with *three* divergent interests on one side, and management on the other?

We have enclosed a fact sheet which briefly itemizes the ramifications of this proposed legislation. We sincerely urge that you analyze this, and trust it will help you to favorably review our position on this controversial Bill.

Very truly yours,

ROBERT W. DONOVAN.

IN OPPOSITION TO JOINT ADMINISTRATION OF INDUSTRY FUNDS,
H.R. 15198 AND S. 3149

1. There are many industry funds throughout the United States at present. The only limitation now is that they may not be jointly administered by management and labor. It is this limitation that current bills would remove.

2. Industry funds monies are contributed solely by management. It is management's money, and decisions regarding its expenditure should be exclusively management's.

3. If industry funds are administered jointly by labor and management, in effect, labor will manage the funds. Management will be forced to agree with labor on their use, or face retaliation.

4. If labor were permitted to jointly administer industry funds, it would carry with it a veto power whenever it disagreed with management on the use of such funds.

5. An industry fund, rather than encompassing an employer-employee relationship, concerns itself more with the relationship of employers to each other, and with employers to the consuming public—which are the responsibilities of management.

6. A union's function is to represent its members with respect to wages, hours and working conditions. Proposed legislation would extend the union's scope of interest to matters of advertising, research, promotion of industry and products.

7. Current Bills are ambiguous with regard to product promotion. This ambiguity could even expose the employer to criminal responsibility.

8. If passed, these bills will create a tremendous increase in the number of labor disputes going to arbitration. At the present time, the cost of arbitration proceedings is borne by each side, with the result that relatively few cases go to arbitration. Under proposed legislation, the cost would be borne by the industry fund, with the result that all cases might go to arbitration. Labor would have no responsibility. The entire burden for the cost of arbitration would fall on the employer.

9. These bills could result in an unfair restriction of trade. They specifically provide for product promotion. Our contractors normally use thousands of products and believe each product should stand on its own merits. To oppose a product would be restrictive; to promote a product is the responsibility of the manufacturer. Under proposed legislation, pressure could be exerted by labor which could make or break a manufacturer.

10. The passage of this form of legislation would mean the usurpation by labor of management's right to operate and promote their industry. Management industry funds are sometimes now used to finance classes in salesmanship, for example. Management feels that such classes benefit not only the contractor but labor as well. Under these bills, labor might well insist that industry funds be used for purposes of their own choosing.

11. This type of legislation would place management in an untenable position with labor. Management, instead of being permitted to promote their industry to the best of their ability, would be subject to the will of labor. If management failed to agree with labor on the use of the industry funds, labor could force their will by economic reprisals.

12. Under this legislation, management would be financing labor's programs. The bills are to be permissive, not mandatory, but labor would undoubtedly insist on negotiating a joint industry funds as it would mean that management would have to pay for programs which are currently being financed by labor. Management's refusal to negotiate an industry fund would undoubtedly lead to strikes for better wages, hours, and working conditions.

13. Passage of these bills would mean an increase in building costs. Joint management of industry funds would undoubtedly mean an increase in the costs to the contractor which would have to be passed on to the consumer. Such costs might well increase the cost of the medium priced single dwelling by as much as $500. In fact, the cost of financing all arbitration proceedings might well reach that figure.

ILLINOIS ASSOCIATION OF
PLUMBING, HEATING, COOLING CONTRACTORS,
Chicago, Ill., May 3, 1968.

Re S. 3149.

Hon. RALPH W. YARBOROUGH,
Chairman, Subcommittee on Labor and Public Welfare,
Old Senate Office Building,
Washington, D.C.

DEAR SIR: Our association, composed of over 600 Illinois contractors, urge your negative vote in considering the above bill.

Industry fund monies are contributed solely by management. It is management's money, and decisions regarding its expenditure should be exclusively management's. Although S. 3149 stipulates such joint management of fund will be permissive, we know as a practical matter this will not be the case.

If industry funds are administered jointly by labor and management, in effect, labor will manage the funds. Management will be forced to agree with labor on their use, or face retaliation.

An industry fund, rather than encompassing an employer-employee relationship, concerns itself more with the relationship of employers to each other, and with employers to the consuming public—responsibilities of management.

A union's function is to represent its members with respect to wages, hours, and working conditions. S. 3149 would extend the union's scope of interest to matters of advertising, research, promotion of industry, and products.

Under S. 3149, management would be financing labor's programs. S. 3149 is permissive, not mandatory, but labor would undoubtedly insist on negotiating a joint industry fund as it would mean that management would have to pay for programs which are currently being financed by labor. Management's refusal to negotiate an industry fund would undoubtedly lead to a strike for better wages, hours, and working conditions.

The above are a few reasons why this legislation should be defeated.

May we hear from you regarding your position.

Cordially,

J. E. FITZGERALD, Jr.,
Executive Secretary.

PETERSON PLUMBING, INC.,
Modesto, Calif., May 17, 1968.

Re bill S. 3149.

Hon. RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR MR. YARBOROUGH: We are writing you as chairman of the Senate Committee on Labor & Publlic Welfare regarding the above bill. We have been contractors in the Modesto, California area for the past twelve years and are very much interested in this bill.

It is our understanding that this bill is scheduled for hearing before your committee on May 21, 1968. We urge you to postpone hearing on this bill until after Memorial Day as the Sheet Metal, Mechanical and General Contractors' Associations are all in convention until then. Inasmuch as they are all vitally concerned in this matter, we feel this bill should be heard when they can be properly represented.

We further feel that this bill should be defeated because contributions to the Industry Fund are made by the contractors themselves for the promotion of the industry. We feel that if labor has a joint trusteeship in these funds that they will be able to use them improperly in arbitration, etc. Labor forces are already benefited through the promotion of the construction industry.

We urge you to vote no on this bill and to postpone the hearing on it until a later date.

Very truly yours,

M. H. PETERSON.

SHEET METAL & AIR CONDITIONING,
CONTRACTORS ASSOCIATION OF ST. LOUIS, MO.
May 17, 1968.

Re S. 3149.

Hon. RALPH W. YARBOROUGH,
Room 460, Old Senate Office Buliding,
U.S. Senate, Washington, D.C.

DEAR SIR: Attached are 72 signed Statements by members and non-members of the Sheet Metal & Air Conditioning Contractors Association of St. Louis in opposition to S. 3149.

It is our understanding that the Senate Labor Subcommittee has scheduled hearings on this Bill for May 21. This legislation, S. 3149, would amend Section 302(c) of the Labor Management Relations Act of 1947 to permit joint (labor and management) trusteeship of industry promotional funds.

Our Industry Fund has been in existence about seven (7) years and has been supported and managed solely by management. We have employed an Executive Secretary who is a Professional Engineer to work with Consulting Engineers and Architects for the purpose of establishing good design principles and improve building specifications. We have promoted maintenance contracts in the industrial plants, and have developed new applications for our industry through research and development. The performance of these functions and the manner of their performance is solely a management function. Voting in favor of this

amendment would impair the performance of these functions by putting unions at the management table, to participate in, and if to thwart or veto the activities of management. Can you think of any greater disservice to the public interest than to bring about such a dilution of management's responsibility through legislation?

Please oppose passage of S–3149.

Very truly yours,

MARCUS BAUER, *President.*
CONSOLIDATED PIPE TRADES INDUSTRY PROGRAM.

DENVER, COLO., *May 14, 1968.*

Hon. RALPH YARBOROUGH,
Chairman, Senate Subcommittee on Labor,
U.S. Senate Office Building,
Washington, D.C.:

S. 3149 to legalize certain jointly administered industry funds due on house floor, Tuesday, May 21. This is a most controversial bill, opposed by every major construction trade association, it should not be allowed to bypass Rules Committee. H.R. 15198 provides for a jointly administered trust fund for the purpose of handling disputes arising under the collective bargaining agreement. This will place management in the position of having to finance every labor dispute the unions wish to bring up. Since management foots the bill we can look forward to a constant string of grievances, jurisdictional disputes, unfair labor practices and court cases. This bill is so loosely written that it may be possible to use the fund to pay for fines and penalties levied against the unions.

A clause in most contracts calls for the loser in arbitration to pay all costs this eliminates irresponsible conflicts which could disrupt our otherwise good relationships in Colorado. While our local unions favor joint administration of industry development funds they opposed trust funds tto interpret collective bargaining agreements in last years version of this bill. Passage of this bill would signal the end of industry funds and the good they have done for Colorado although some workable compromises are possible the bill in its present form is a travesty we ask you to do everything in your power to defeat this bill or failing that to amend it to provide that joint funds cannot be used to finance court costs, fines or penalties levied against either management or labor.

LOU THURBER,
Executive Director,

CRABB PLUMBING AND HEATING,
Denver, Colo., May 10, 1968.

HON. RALPH YARBOROUGH,
Chairman, Senate Subcommittee on Labor.
Senate Office Building,
Washington, D.C.:

We request you to review and vote against HR 15198 and S 3149. Letter of reasons follows.

HUGH T. CRABB.

BROWN SHEET METAL & MECHANICAL, INC.,
West Oakdale, Calif., May 17, 1968.

Hon. RALPH YARBOROUGH,
Washington, D.C.:

We believe that bill #S–3149 is contrary to public interest. We urgently request your assistance in defeating this measure.

ARTHUR H. BROWN, *President.*

HOUSTON SHEET METAL CONTRACTORS ASSOCIATION,
Houston, Tex., May 13, 1968.

Hon. RALPH YARBOROUGH,
Chairman of the Senate Labor and Public Welfare Committee,
Washington, D.C.:

You are urgently requested to postpone hearings on S. 3149 until after Memorial Day. Organizations that are vitally opposed to S. 3149 cannot voice the most

effective protest until after that date due to prior convention commitments. These organizations are the major opposition to this bill and we feel that they should be heard.

IVY E. DAVIS.

BUILDERS ASSOCIATION OF MAHONING VALLEY,
Youngstown, Ohio.

Senator JACOB JAVITS,
Senate Subcommittee on Labor, Senate Office Building,
Washington, D.C.:

Construction Advancement Program of Mahoning Valley and Builders Association of Mahoning Valley totally opposed to S. 3149 industry promotion bill. As second industry fund in U.S. request permission to testify to explain our opposition.

CLARENCE C. HANNA,
Executive Vice President.

TO UNITED STATES SENATORS

I am opposed to passage of S–3149 and endorse the Statement of Policy of the Sheet Metal & Air Conditioning Contractors Association of St. Louis which is attached.

(The statement referred to appears on p. 111.)
(The signers of above statement follow:)

C. Whitworth, President, Whitworth Engineering Co.; Geo. W. Rupprecht, President, Tharpe Heating & Sheet Metal Co.; Alex C. Toth. President, Alex Toth Heating, Cooling, Inc.; George L. Welsch, Secretary, Welsch Furnace Co.; A. W. Beasley, Shure-Richardson, Inc.; L. Droste Heating & Sheet Metal Co.; Ray Goldkamp, Frank Fischer, Inc.; J. W. Grundarf, J. W. Grundarf Sheet Metal Works.; Margaret A. Henderson, Bermuda Air Conditioning & Heating Co.; G. A. Mauller, Jr., Mauller Air Conditioning Co., Inc.

Carl G. Pruetzel, Pruetzel Air Conditioning & Heating Co., Inc.: Clifford Welsch, Welsch Heating & Cooling Co.; J. J. Schrader, Jr., Jos. J. Schrader Heating & Sheet Metal Co.; Lawrence H. Lucas, Lucas Sheet Metal & Furnace Co., Inc.; L. W. Shocklee, Shocklee Heating & Sheet Metal Co.; Carl Hopmann, Hopmann Cornice Co.; John R. Ryan, Ryan Heating Co., Inc.; Stephen N. Zagan, St. Louis Furnace Supply Co.; Homer B. Stokes, Stokes Erectors, Inc.; Robert F. Meeh, R. F. Meeh Co.

Ray S. Cise, Vice-President, Maplewood Sheet Metal Co.; Dale S. Merritt, Merritt Heating & Air Conditioning Co.; Lee K. Schwartz, Mound Rose Cornice and Sheet Metal Works; John Meyer, Meyer Bros. Heating and Cooling; Robert Schutzer, Rock Hill Mechanical Corp.; John J. Puhl, Puhl & Hepper Manufacturing Co.; Gene Marbury, Victor R. Rocket Sheet Metal Co.; Phillip M. Poehner, Phil Poehner Heating-Cooling; John F. Higgins, Jr., President, J. F. Higgins & Co.; A. Lasater, Lasater Heating & Air Conditioning Corp.;

Victor B. Kuenz, Kuenz Heating and Sheet Metal Co.; Lester W. Lang, Lackland Sheetmetal Co.; A. W. Medsker, Chuck Medsker Heating, Cooling, Sheet Metal Co.; Joseph L. Hall, Hall Heating and Air Conditioning Corp.; Edw. B. Harke, Harke Heating and Air Conditioning Co., Inc.; G. F. Stoverink, County Heating and Cooling Co.; Emil F. Harster, Harster Heating and Air Conditioning Co.; J. Henges, Henges Co., Inc.; Russell Kaltenbach, H & K Heating and Air Conditioning, Inc.; J. Knoll, Jack Knoll, Heating and Cooling, Inc.

Karl H. Sanderman, Jetco Heating; Henry C. Fischer, Fischer Heating & Sheet Metal; R. H. Grossenbacher, Gamco Heating & Cooling Corp.; E. T. Groppel Co., Inc.; Edward A. Grossmann, Grossmann Contracting Co.; Edward Gettinger, Coolaire Co.; R. B. Cleveland, R. B. Cleveland Co., Albert A. Kuhn, Climate Engineering Corp.

Edward G. Zish, Doll Heating-Cooling, Inc.; J. M. Tasch, Downtown Heating & Sheet Metal Co.; C. A. Zachnow, Eveready Heating & Sheet Metal, Inc.; Harry Zaifas, Excel Heating Co.; Robert J. Baniak, Automatic Climate Control Co.; Henry A. Fichter, Baden Sheet Metal Works; Louis Baumgartner, L. G. Baumgartner, Inc.; Harold C. Bennial, Bennial Sheet Metal & Erection.

Albert E. Berkel, Berkel Sheet Metal & Furnace Co.; Alfred Rosenstrauch, Alro Heating & Cooling; F. William Rundquist, Air Masters Corp.; Marcus C. Bauer, Acme Heating & Ventilating Corp.; H. L. Westrich, Adams Furnace Co.; H. J. Williams, Williams Heating Co.; Stephen J. Sabo, Golterman & Sabo, Inc.; Roland J. Weis, Weis Heating & Cooling Co.; A. Zacher, Secretary, Western Sheet Metal Works, Inc.; E. Baldwin, Western Blow Pipe & Sheet Metal Co.; W. E. Hummert, W. E. Hummert Co.

(Whereupon, at 11:15 a.m., the subcommittee adjourned, to reconvene at the call of the Chair.)

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