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HEARINGS
BEFORE THE
SPECIAL SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS
FIRST SESSION
ON
H.R. 100
A BILL TO AMEND SECTION 8(b) (4) OF THE NATIONAL LABOR
RELATIONS ACT, AS AMENDED, WITH RESPECT TO STRIKES
AT THE SITES OF CONSTRUCTION PROJECTS

HEARINGS HELD IN WASHINGTON, D.C.,
APRIL 22, 25, AND 29, 1969

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

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SITUS PICKETING

TUESDAY, APRIL 22, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR,
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to call, in room 2261, Rayburn House Office Building, Hon. Frank Thompson, Jr., (chairman of the subcommittee) presiding.

Present: Representatives Thompson, O'Hara, Carey, William D. Ford, Stokes, Clay, Ashbrook, Reid, Dellenback, Eshleman, Hansen, and Ruth.

Staff members present: Peter W. Tredick, counsel; Daniel H. Politt, special counsel; Jeunesse M. Beaumont, clerk; and Michael J. Bernstein, minority counsel for education and labor.

Also present: Representative Burton of California.

(Text of H.R. 100 follows:)

[H.R. 100, 91st Cong., first sess.]

A BILL To amend section 8(b) (4) of the National Labor Relations Act, as amended, with respect to strike at the sites of construction projects

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(b) (4) of the National Labor Relations Act, as amended, is amended by inserting before the semicolon at the end thereof "*Provided further*, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint ventures or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: *Provided*, That in the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is, or will be, the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization of which the labor organization involved is an

affiliate. The notice requirements of the preceeding proviso are in addition to, and not in lieu of the notice requirements prescribed by section 8(d) of the Act. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership or control of such site by a single person shall not be the only factor considered".

SEC. 2. The amendment made by this Act shall take effect ninety days after the enactment of this Act.

Mr. THOMPSON. The subcommittee will be in order.

This will open hearings on H.R. 100, the common situs picketing legislation. The public record on this bill, in earlier congressional hearings and committee reports, is voluminous. Four Presidents and Members of Congress from both parties have urged its enactment. For example, in 1954 President Eisenhower's labor-management relations message included this statement:

I recommend that the act be clarified by making it explicit that concerted action against . . . an employer on a construction project who, with other employers, is engaged in work on the site of the project, will not be treated as a secondary boycott.

H.R. 100 would enact President Eisenhower's recommendation, the same recommendation which was repeated by Presidents Kennedy and Johnson, into law.

H.R. 100 is a narrowly drawn bill, amending only section 8(b)(4) of the National Labor Relations Act. It is designed to reverse the *Denver Building Trades* decision, and thereby to restore to unions in the building and construction industry the right to engage in peaceful activity at common construction sites to protest substandard conditions maintained by any of the contractors working at that site.

Contrary to the allegations which opponents of the bill usually raise, this legislation does not affect any other sections of the Labor Act. It does not, for example, amend in any way the present law regarding jurisdictional disputes or product boycotts.

In my judgment, H.R. 100 is a matter of simple equity. From the point of view of national labor policy, enactment of common situs picketing legislation is long overdue. I hope it will be possible to get speedy action on H.R. 100 this year.

I would like to make an observation about these hearings. We have invited 12 witnesses, representing various organizations and positions. Following my established practice, I consulted well in advance of these hearings with the ranking Republican member of the subcommittee, Mr. Ashbrook, about the scheduling of witnesses. I think we have a full witness list, one which will insure that all points of view on this legislation are heard.

Any additional group or individual wishing to file a written statement for inclusion in the printed hearing record should send the statement to the subcommittee office by Wednesday, May 7.

Our first witness this morning is the Honorable George P. Shultz, the Secretary of Labor.

Secretary Shultz, you are welcome indeed. We have your statement before us and you may proceed as you wish.

STATEMENT OF HON. GEORGE P. SHULTZ, SECRETARY OF LABOR

Secretary SHULTZ. Thank you, Mr. Chairman, and gentlemen. I am here today to indicate my support for legislation to legalize common situs picketing, if that legislation is carefully designed to incorporate appropriate and essential safeguards.

I recognize that the primary purpose of this legislation is to equalize the right to picket in construction and industrial settings including the right to picket for organizational purposes. I am sympathetic to such equalization. Further, in this legislation as in all other labor legislation, the public interest and the rights of employees and neutral third parties must be protected.

The history of legislation to deal with the common situs issue is long and complex, running back more than 22 years to 1947.

In that year, Congress amended the National Labor Relations Act to make certain acts unfair labor practices. One of the amendments, the secondary boycott provisions of section 8(b)(4), made it an unfair practice for a union to engage in various specified activities with the intent of causing neutral employers to cease doing business with an employer with whom the union has a dispute.

In 1951 the Supreme Court decided the *Denver Building Trades* case and by so doing focused attention on the common situs issue. In that case a general contractor sublet electrical work to a nonunion subcontractor on a construction project on which all other subcontractors used union employees.

The Supreme Court sustained a National Labor Relations Board decision that the union's conduct in picketing the construction project because of the use by one subcontractor of nonunion workers was an unfair labor practice.

The crucial finding was that the general contractor and the non-union subcontractor were independent legal entities and therefore indiscriminate picketing of the entire site was directed against neutral employers—the general and other subcontractors—and was, thus, unlawful. Critics of the decision have challenged its analysis of the relationship between contractors at a common situs.

The history of legislation introduced since 1951 to resolve this issue and the subsequent development of pertinent Board and court decisions make clear that it is difficult both to generalize in this area and to frame specific legislation language to deal equitably with the common situs question and also to protect the public interest, the rights of employees, and the rights of third parties.

I would like to review this history briefly with you and discuss some of the problems it raises. I believe this history shows, not only how difficult it has become to deal with this problem, but also that over the years a number of new issues have been raised with which no one bill yet deals adequately. Many of these issues were not originally foreseen, but have surfaced as different situations have been presented to the Board and the courts.

I believe, therefore, that legislation developed to legalize common situs picketing must take account of these problems and contain certain safeguards, many of which are widely agreed to in principle but which seem difficult to frame in legislative language. These safeguards are not adequately secured in H.R. 100. I therefore do not support H.R. 100 as presently drafted.

Since there is a great deal of room for discussion as to how our goal can be accomplished, I believe that the Department of Labor, at this time, can help most by providing general guidance on the problem and by expressing a willingness to work together with you and interested parties.

I should like to identify here certain principles which should guide us in framing an effective, practical, and realistic bill, and then to discuss them in more detail later during the course of my statement.

GUIDING PRINCIPLES

A. No bill should transform presently illegal activity, apart from "common situs picketing," into legal activity. In particular, common situs picketing should not be used to victimize an employer when the real dispute is between two unions as to which should perform certain work—the jurisdictional dispute to which the chairman referred to earlier—nor should it be used for a discriminatory purpose.

B. No bill should apply to general contractors or subcontractors operating under State laws requiring direct and separate contracts on State or municipal jobs. That is to say, any legislation must recognize these State laws as establishing conditions of neutrality between contractors.

C. The interests of industrial and independent unions must be protected.

D. The bill should include language amending section 301 of the National Labor Relations Act to permit enforceability of contracts by injunction.

E. Any bill should encourage the private settlement of disputes which could lead to the total shutting down of a construction project. To that end, notice of intent to picket should be required and there should be a limit to the time during which picketing an entire situs should be permitted to occur.

With that as a brief background on the general principles, I would like now to review the history of this issue.

LEGISLATIVE HISTORY

As early as 1954, and again in 1956 and 1958, President Eisenhower recognized that the NLRA created inequities as between construction workers and industrial workers. In his first labor message to Congress in 1954, he advocated an amendment to permit situs picketing:

"I recommend that the act be clarified by making it explicit that concerted action against an employer on a construction project, together with other employers, is engaged in work on the site of the project, will not be treated as a secondary boycott."

In his labor message to Congress in 1956, President Eisenhower said:

The Administration recommends that the ambiguities and inequities that exist in these provisions be removed . . . to make it clear that they do not prevent . . . activity against secondary employers engaged in work on a construction project with the primary employer.

Between 1954 and today many so-called "common situs" bills have been introduced and supported by both sides of the aisle with provisions substantially similar to H.R. 100, the bill before you today. An example is S. 2650 of 1954, introduced by Senator Smith of New Jersey, Republican, and favorably reported.

In 1958 Senator Smith again introduced common situs legislation (S. 3099) which first contained language closely similar to H.R. 100.

In 1959 other similar bills were introduced by members of both parties: S. 2643 by Senators Kennedy, Kuchel and Prouty; H.R. 9070 by Congressman Thompson, Democrat, New Jersey; and H.R. 9089 by Congressman Kearns, Republican, Pennsylvania.

Even in this earlier period efforts were already being made, however, to write various safeguards into these proposed bills.

As early as 1960, Congressman Kearns (Republican) in the House committee report on H.R. 9070 (H. Rept. 1550), stated that, although he had long desired to help resolve the common situs issue, after listening to the testimony of both those who favored the bill and those who opposed it, he was convinced enactment of the bill in its present form would be a disservice to all concerned. He stated:

The testimony disclosed sincere differences of opinion as to the meaning of the law now applicable to secondary boycotts at common construction sites and the bill, as reported out by the committee, does nothing to clarify present law.

Even the bill's strongest supporters have not been able to agree as to its meaning. For example, one proponent felt the bill might give industrial unions the right to picket a manufacturer and take away jobs of members of building trades unions who are performing alterations or repairs on the manufacturer's plant.

Others believe the proposed language will permit building trades unions to use secondary boycotts as a means of preventing installation of products made by members of industrial unions.

Also, the problem of racial discrimination in some building trades unions will be intensified by the bill should it pass in its present form in that it will allow the secondary boycott weapon to be used by unions who wish to force such discrimination.

The foregoing are examples of the problems which H.R. 9070 raises rather than resolves. There are many others. Therefore, I strongly believe clarifying amendments are essential.

Congressman Goodell and Frelinghuysen, Republicans, while voting to report H.R. 9070 and not requesting clarifying amendments, tried to achieve the same result as such amendatory language by statements in their supplemental views that the bill's provisions were not designed to legalize activities such as those described by Congressman Kearns.

As I will indicate, by 1967, Congressman Goodell had become convinced that mere statements to this effect were not enough and legislative language is necessary.

So, from 1960 on, various issues were raised which became reflected in subsequent bills.

Serious labor disputes at missile sites gave rise to language in the 1961 bill requiring strike notices in missile site disputes.

In 1961, a dispute between the industrial unions and the building trades unions over the so-called "separate gate" issue obviated any chance of passage of a "common situs" bill.

The Industrial Union Department of the AFL-CIO refused to support the bill unless it protected picketing by industrial unions at plants where employees of construction contractors or other neutrals were at work.

As I discuss later, the National Labor Relations Board, ultimately upheld by the Supreme Court, found that industrial unions could not picket entrances reserved for the exclusive use of employees of independent contractors working at the plant on work unrelated to the normal operations. Some industrial union department affiliates feared that with the "protection" of the common situs bill, building and

construction trades unions might picket industrial plants if the regular work force represented by industrial unions performed in-plant construction work which, ordinarily, might be considered as building and construction trades department work.

This issue resulted in the addition of language to Congressman Thompson's bill (H.R. 6363) in the 89th Congress (1965-66) which prohibited common situs picketing where the dispute involved a labor organization representing employees of an employer not primarily engaged in the construction industry. This 1965 bill was reported as H.R. 10027, House Report 1041, September 21, 1965.

The bill now contained several additional features to take care of the issues which had arisen since 1954: (1) A notice requirement for strikes on missile sites, (2) an amendment to make it clear that ownership or control of the site by a single person is not the only factor in deciding whether several employers are joint ventures, (3) a provision excluding disputes involving employers not primarily in the construction industry whose employees are unionized and where the issues involve such unions (the industrial union language), and (4) a provision excluding a dispute in violation of an existing collective bargaining agreement, to which Congressman Goodell sought to add, "or other applicable agreement, arrangement, or procedure."

Other issues also appeared. District 50 of the UMW, an independent union which sometimes represents employees of construction contractors, felt the exemption to deal with the industrial union issue did not take care of a situation where construction unions would picket contractors employing District 50 members.

For this reason District 50 urged that the bill be amended to prevent strikes if the dispute involved a labor organization which represented employees of an employer at the site regardless of whether he was primarily in the construction industry.

Other problems which have been injected into consideration of this legislation are (1) the product boycott; (2) State laws requiring the independent letting of contracts; and (3) concern that common situs picketing might be used to frustrate Federal policy to alleviate the effects of racial discrimination.

In 1967, when H.R. 100 appeared on the scene, a bill (H.R. 7750) prepared by then Congressman Goodell attempted to meet some of these problems but failed of acceptance.

Thus, we see that there are still many issues which the legislative drafters have not been able to settle.

Before I turn to a more detailed discussion of the principles I outlined earlier and which I hope can help us to find a legislative solution, I would now like, as an interested layman—and I might say, Mr. Chairman, I am not a lawyer and I find myself very easily lost in all of the intricacies of this legislation, but as an interested layman, to review briefly with you, the Board and court case history that bears on this whole subject.

CASE HISTORY

The Board, in the administration of the act, has recognized the legitimate rights of construction unions to picket this primary employer at a "common situs" under standards which seek to insure that other employers do not become enmeshed in the dispute of another.

Subsequent to the decision of the Court of Appeals for the District of Columbia in the *Denver Building Trades* case (in which that court disagreed with the Board's neutrality of general and subcontractor position) and prior to the Supreme Court's reinstatement of the Board's position, the Board in *Sailors Union of the Pacific*, 92 NLRB 547, announced what is now known as the *Moore Dry Dock* standards.

These standards sought to strike a balance between the proper scope of primary picketing and the right of neutral employers on a common situs to be protected from the effect of the primary employer's dispute. Briefly, these standards require a union which pickets at a common situs to abide by restrictions on area, time, and identification in order to confine its activity as much as possible to the primary employer.

As is not unusual when standards are first enunciated, in the earlier years the *Moore Dry Dock* rules were applied in a more or less literal fashion. As you know, these rules arose in an ambulatory picketing context. When they were applied to the construction industry, to hold that picketing at a common situs was unlawful if the primary employer had a legal place of business in the general locality where the picketing could take place, such an application of the doctrine effectively prevented meaningful picketing of the primary employer on construction sites.

As experience has developed in the application of these concepts to the construction situation, the per se, mechanical application of the *Moore Dry Dock* standards has given way to a more realistic application of the rules.

Thus, for example, in *Local 3, IBEW*, 144 NLRB 1089, the Board ruled that temporary absences from the situs, such as the primary employer not scheduling work for that day, the success of the union in convincing employees of the primary employer to strike, or the employer removing the employees from the situs, do not thereby render the picket line at the common situs unlawful.

To a certain extent, then, some of the inequities faced by construction unions in the 1950's have been remedied by further elaboration of the National Labor Relations Act by the Board and the courts. This is not to say, however, that the basic issue presented by the *Denver Building Trades* case does not remain with us.

The main difference is the nonapplication to construction sites of the "normal business" doctrine which determines the legality of picketing at a separate gate at an industrial plant. That is the issue of equity that I referred to at the start of my testimony.

The leading case in the separate gate area is *Local 761, IUE v. NLRB*, 366 U.S. 667, involving the separate gate set up by the struck industrial employer for the exclusive use of employees of its independent contractors. The Supreme Court held that picketing at the separate gate would be protected primary activity if the work done by the employees using this gate was related to the normal operations of the struck employer or was of a kind which would necessitate the curtailing of those operations.

In the construction industry a majority of the Board and the two appellate courts, which have considered the matter, ruled that the "related to the normal operations" test did not apply to a construction common situs.

I think that is sort of a central opinion here.

Before leaving this legal history discussion I should mention the "product boycott." In 1967 the Supreme Court held that a union does not violate the secondary boycott provisions of the act if it strikes its employer in order to protest his attempt to use products manufactured elsewhere which would partially eliminate that work.

APPLICATION OF PRINCIPLES

Mr. Chairman, I would now like to turn to a discussion of the general principles which I outlined briefly at the opening of my statement as applied to the issues which arise from a consideration of the legislative and case history.

A. So far as I know, everyone has always agreed on item A of these principles, which is that no bill should transform presently illegal activity, apart from "true common situs picketing," into legal activity. If the conduct is violative of other sections of the act, it should clearly still be unlawful.

The existing act recognizes that an employer should not suffer because of a dispute between two unions as to which should perform work. Thus, a special procedure for the resolution of the dispute is set forth in section 10(k) and picketing in furtherance of such a dispute violates 8(b)(4)(D). A charge brought under that section triggers the 10(k) procedure.

Under present law, also, if a union pickets an entire site without conforming to the *Moore Dry Dock* standards, it violates 8(b)(4)(B), and under that section—in contrast to 8(b)(4)(D)—the Board must seek an immediate injunction.

We do not believe that any bill should deprive contractors on a construction site of this protection when the dispute is jurisdictional in nature.

Under this principle of not transforming already illegal activity into legal activity, I also stated that common situs picketing should not be used in furtherance of a discriminatory objective.

The Government is actively engaged under title VII of the Civil Rights Act and, under the Executive Order program, 11246, in securing equal employment opportunities for minorities which have been too long victimized by discrimination in all fields, including employment.

Thus, common situs legislation should make clear that common situs picketing should not be permitted if it is directed at coercing an employer who is attempting to meet such legal as well as moral obligations by his employment of minorities and by affirmative action programs to end the effects of such discrimination.

B. Principle B also seems relatively clear and indisputable. Where a State law requires separate and independent contracts for a State or municipal construction project it is obvious that the contractors on the project cannot be held responsible for each other's labor policy. As it is impossible for any one of the contractors to control the others in such a situation, common situs legislation must recognize that these State laws create a condition of neutrality between the contractors which must be respected.

C. Principle C recognizes that the interests of industrial and independent unions must be protected. If a union has been lawfully rec-

ognized, picketing by a competing union directed at its presence on a construction project should not be made lawful.

In such cases the issue may become one of a jurisdictional nature, which could be dealt with as discussed under principle A. In other cases, the issue might be of a boycott against the products manufactured by the employer of employees represented by a union but where the operation is conducted off the construction site. The latter issue presents problems to manufacturers in context of technological changes as well as to industrial unions whose members work in plants which prefabricate items to be used in the construction site.

D. Although H.R. 100 recognizes that strikes in violation of an existing collective bargaining contract should not be accorded a privileged position with regard to common situs activity, it provides no relief for the problem of specific enforcement of contractual obligations. There should be little dispute over the principle that contracts should be enforceable by injunctions.

The Supreme Court held in *Sinclair v. Atkinson* (370 U.S. 195 (1962)), that a union which violates a no-strike clause may not be enjoined from such conduct in Federal court. If a union violate a no-strike clause, a damage action is not a feasible remedy to compensate an employer for the period during which he has been shut down by a strike. This is especially the case in the construction industry, where time is of the essence. When contracts and no-strike clauses are voluntarily signed and the parties have a grievance-arbitration procedure to resolve disputes over the interpretation of the contract, there is no valid reason why such agreements should not be enforced. Section 301 of the Taft-Hartley Act should clearly authorize specific enforcement of such agreements.

E. Any bill should encourage the private settlement of disputes which could lead to the total shutting down of a construction project. Not only should we be sensitive to the public interest in protecting the rights of individual employees as we devise an equitable solution to this problem, but to the maximum extent feasible the public interest in retaining the essentially private nature of our collective bargaining process should also receive due consideration.

I would recommend that before picketing of an entire situs is permitted pursuant to new legislation, a union which intends to engage in picketing an entire situs give a timely 7-day notice of intent to all employees and unions on the situs, and furthermore, that such picketing be limited to a 15-day period. Any picketing which is now permitted under Moore Dry Dock standards would be unaffected by this legislation.

The purpose of this suggestion is twofold. First, this 7-day waiting period is intended to encourage the private settlement of disputes prior to permitting the dispute to encompass the entire situs. A waiting period can provide the time and the encouragement to the parties to settle many disputes before they are escalated into an actual strike.

I believe this has worked out fairly well in the missile site situations. Furthermore, I visualize a number of situations where this requirement would serve to induce parties who would be affected by the proposed picketing to mediate between the disputing parties.

Second, the 15-day limitation is a recognition that, although subcontractors are closely interrelated with a general, their separate legal identity should be considered.

CONCLUSION

Mr. Chairman, it seems to me that this issue, as it has been debated over the years, has not only grown in complexity but has also served to inflame situations among the parties. The construction industry has been, and is today, preoccupied with this issue, and this unfortunately has diverted attention from other pressing and important problems.

I believe, if all parties will apply themselves to finding a legislative solution in accordance with the above principles, that we should finally be able to resolve this difficult issue.

The Department has been meeting with employer and union groups on other matters to assist in the arrival of solutions to vexing substantive problems that beset the industry and trouble the public. We wish to get on with this work, and, in doing so, it would be helpful to put this inflammatory issue behind us. To that end, we stand ready to add our efforts and resources to bring about a considered solution of this matter.

Thank you.

Mr. THOMPSON. As the author of H.R. 100, I appreciate very much your support of common situs picketing legislation and I want to note for the record that your support puts you in a very distinguished position. You represent the fifth consecutive administration which has favored this principle.

I think it would be useful to turn for a moment to several of your guiding principles on pages 3 and 4 of your prepared statement. I do not intend to cover them thoroughly because I do not want to intrude on the questioning of my colleagues on the subcommittee.

Turning to principle A on page 3, I agree completely with the thrust of it, that this bill should not transform presently illegal activity apart from situs picketing into legal activity. This is why the bill contains on page 2, lines 5 and 6, language which sets forth that situs picketing may only be used if there is a labor dispute "not unlawful" under the act.

The language is not new in my bill. The exact language is contained in S. 748 of the first session of the 86th Congress, a bill introduced in the Senate in 1959 by Senators Goldwater, Dirksen, Mundt, Hruska and others. This earlier bill, S. 748, incorporated the recommendations of President Eisenhower and his Secretary of Labor, the late James Mitchell. This earlier bill contains precisely the language on this point which is contained in my bill H.R. 100.

Turning to your guiding principle C that the interests of industrial and independent unions must be protected, I am sure you know that the industrial union department of the AFL-CIO supports H.R. 100.

It took some time, I must confess, for a suitable agreement between some of the industrial unions and the construction unions on this point. But the language in H.R. 100 does protect industrial unions.

With respect to the independent unions, these are protected under H.R. 100 because of the language that I referred to earlier, which states that situs picketing cannot be used for any unlawful purpose.

On page 12 of your statement when you discuss more fully your guiding principle C you refer to the so-called product boycotts. You refer in this context to the technological changes in industry and to the use of prefabricated items at the construction site.

This is a very large problem and unions inside and outside the construction industry are searching for ways to cushion the impact of technological advances or displacement.

As you are aware, the various unions in the various industries have negotiated a number of such cushions—early retirement, sabbatical leave, shared work, antisubcontracting agreements, and so on.

The Government is a partner in solving these problems. I need only refer to the occasion of your testimony yesterday in regard to the Job Corps and other manpower and training efforts of the Office of Economic Opportunity, the Department of Health, Education, and Welfare, and your Department.

I would be hesitant to try to solve these very large problems in the context of this bill and I do not attempt to do so.

In relation to your guiding principle D on page 3 to permit enforcement of contracts by injunction, the memory of Senator Norris and Congressman La Guardia and the bill that bears their names makes me hesitant to go back to the pre-1932 era of government by injunction. I would really have to give a lot of thought and hear a lot of testimony before I could make up my mind on this.

I hope it is not necessary to do this thinking or to hear this testimony before we enact what is essentially a very simple amendment to section 8(b) (4) (B) of the Taft-Hartley Act.

In relation to your guiding principle E that there be a 7-day notice of intent and a 15-day period of intention on picketing, I am as yet unsure. It is a new suggestion.

Are there any operations in the normal construction project which would or could be completed within the 7-day notice period? Or is the 15-day limitation period too little or too much or necessary? Presuming that the picketing is legal and presuming further that you have given a 7-day notice, then why limit it to 15 days or why limit it at all?

Secretary SHULTZ. I suppose this is in line with the general limitations on the duration or organizational picketing which is limited to 30 days. On a construction site the problems are different from most industrial sites in that as you pointed out in your comment on the 7-day periods jobs come on and go off more rapidly, and also I think the impact of common situs picketing probably outlasts the picketing itself.

So, I should think some kind of recognition of the special characteristics of the construction industry would be called for.

Let me say on the question of the durations of these stays, the spirit of this statement is that here are some ideas and principles, and so forth. They are not put forward as a lawyer with a sure touch of how they would be translated into legislative language, but rather in terms of some guiding ideas in a kind of lay or practical sense of the problems as I see them.

If somehow or other, at least my thinking is, if we could get some sort of agreement in these practical terms, then conceivably some lawyers could interpret them into the language of a bill. Although I am told, and I really don't believe it, but I am told, that on this issue you can take a couple of lawyers and tell them we have agreed on such and such and you draft the language, and 3 days later they come back shaking their heads and say they have not agreed, it seems to be, as far as I can see, a very technical thing.

In any event, the number of days really ought to be discussed and the idea of a notice period and some limitation on the length of the picketing—maybe the 15 days is too long, maybe it is too short; maybe the 7 days is too long, maybe it is too short, but they are put forward as general ideas to work on.

Mr. THOMPSON. I am extremely grateful for the form in which you offered your testimony and for your enunciation of these principles, despite the difficulty encountered by lawyers and legislators in drafting language. I would see no real reason why on the basis of the principles that you have set forward we could not arrive at a satisfactory agreement to solve this problem.

I would have to take exception to your suggestion that we amend section 301. That would open the bill up. It is my judgment that it should be limited to 8(b)(4)(B), and the other problems on which you touched are real, indeed, but I think they should be the subject of separate legislation. The addition of an injunction process, amending 301 and so on, I do not consider relevant to the narrow common situs problem that this legislation tries to solve.

Before turning to my colleagues, I would like to express my appreciation for your statement and for your support of the principle of solving this problem.

Thank you.

Secretary SHULTZ. Mr. Chairman, could I comment on your statements about the enforceability section of my testimony?

I certainly am not advocating a return of government by injunction as in the 1920's. I do not believe that that is what is suggested here at all. As you know, that was just a freewheeling use of the courts to stop strikes and push employees around without regard to real consideration of the equities as we think of them today.

Rather, the idea here is to use a process that is still very much alive in the spell of labor law but under much more control. An injunction that does have the effect of stopping something, at least temporarily, when that something causes damage that is very difficult to rectify.

As you well know, and I take it you are fully in support of this from what you said about my comment on principle A, the juxtaposition of the jurisdictional dispute language with 8(b)(4)(B) language means that in jurisdictional disputes an injunction must be sought by the Board as a remedy there, and you are in agreement with that.

So, I do not think what we are discussing is the idea of whether an injunction should be possible to use at all in labor matters but under what circumstances and under what controls. All I am suggesting is, given the idea that common situs picketing would certainly have as one of the purposes for which it might be used by a union, the obtaining of a contract through negotiation with an employer, we ought to be sure, particularly since the nature of the construction industry puts a great premium on timeliness, as you also suggested in your comment on the 7-day proposal, that this contract is one that can be enforced.

Mr. THOMPSON. Thank you very much.

Mr. Ashbrook?

Mr. ASHBROOK. Thank you, Mr. Chairman.

First, I would like to add my comments to what the chairman of the subcommittee said at the outset. We have had some feeling expressed by

some witnesses that they felt they should be heard. I would merely say we have been through this once before and the chairman and I certainly agreed on the fact if the witnesses were broadly representative of the points of view to be expressed that it was probably not necessary to hear 100 witnesses since we have been through this before, so to those witnesses who want to be heard I certainly want to say I think the chairman has been 100 percent fair in making sure that witnesses do express all points of view and I thank him for that.

Mr. Secretary, in listening to your statement and in reading your statement, unless there is something explicit that I do not see in one of your statements, I think you overlooked something which to my way of thinking is at the heart of the entire problem.

If you will refer to the bottom of page 1 and the top of page 2, you say the Supreme Court sustained a National Labor Relations Board decision that the union's conduct in picketing the construction project because of the use of one subcontractor of nonunion workers was an unfair labor practice.

Is that generally what you think public policy is and should be?

Secretary SHULTZ. The public policy is, as a result of that decision, that if a union pickets a common site, trying to organize a nonunion subcontractor, that is illegal except insofar as the picketing is conducted in accordance with the Moore Dry Dock standards. The law as interpreted by the board and the courts has as I suggested in my statement, moved part way but not completely all the way forward permitting common situs picketing.

At the start of my testimony I said that it seemed to me that we should equalize the right to picket in construction and industrial settings including the right to picket for organizational purposes. I think that is probably the main issue.

Mr. ASHBROOK. In other words, do you think public policy should be changed and it should be allowed therefore as a legal activity? This is what I asked when I asked if this is explicit in your guideline A.

If this were a type of illegal activity that you do not want to make legal then certainly we have missed the point here, because this is exactly what can happen if H.R. 100 passes. That is why I wondered about that.

Secretary SHULTZ. I think in the start of principle A I say no bill should presently transform illegal activity apart from common situs activity into legal activity.

Mr. ASHBROOK. In other words, it would not be explicit in A that this would be one type of public policy that you think should be continued? In other words, you would recommend a change?

Secretary SHULTZ. I guess that is right. I think I would rather say that I do not conceive of this issue and this is the reason for all of this verbiage about principles, that you can take a piece of it and pull that out and say "Yes" or "No" about that piece.

You have to look at the whole setting of things and in the whole legislative and court history of this new issues have come along and that is sort of the burden of my testimony.

To get a considered position you need to look at many aspects of the problem together.

Mr. ASHBROOK. Let me say, then, I find your guiding principles not exactly following your expressed intention of trying to make a balance,

of trying to protect neutral employers and employees. In C you say the interest of industrial unions must be protected. Nowhere do you say anything about the interests of nonunion employers and employees.

What do we do about their rights and interests? Do we protect them or are they just going to go out?

Secretary SHULTZ. As I see it, there are two particular aspects to the protection of the interests of all employees. One has to do—and I think it is an extremely important issue and related to this issue—with the so-called product boycott question and the flow of products into a construction site from offsite manufacture of one kind or another.

I tried to take a position on that and, second, the question of the nonunion employee on the site and he may or may not have to join a union, but all that I am trying to say here is that a union should have the right to picket for that objective. He does not have to join if he does not want to.

Mr. ASHBROOK. Even up to and including picketing or inducing a strike against an independent contractor who up to now you have referred to as a neutral person not involved on the site?

Secretary SHULTZ. The problem is sort of the general contractor and the various subcontractors are distinct legal entities, so they are different parties to some extent but in another way they are also related. I think that is sort of the hang-up on all of this, to try to disentangle them, in what sense they are related and in what sense they are not.

I think to the extent that there is sort of a principle of equity involving the industrial and the construction setting, it involves the application of this normal business idea which the courts have held is okay in the industrial setting but not the construction setting.

Mr. ASHBROOK. On this disentanglement and hang up, we are getting at the very heart of the situation. If H.R. 100 passes and if your recommendations are implemented, the superior economic power of the unions is going to make it very possible—and some of us think that absolutely probable—that they will squeeze out all the nonunion contractors, that that is really the heart of the whole situation.

I don't want to take any more time but I looked with interest on page 12 when you mentioned principle C recognizes that the interests of industrial and independent unions must be protected. If a union has been lawfully recognized, picketing by a competing union directed at its presence on a construction project should not be made lawful.

All the way through you mention union, union, union, but no place do you refer to at least what I feel should be the rights of the nonunion employer and employee on the site. I would have to say I think your statement is very silent on this area and I hope it does not imply the policy of the Department of Labor and the Secretary of Labor to in effect allow what has up to now been by your own statement an unfair labor practice and an illegal activity to suddenly become a legal activity. That does not seem to square with your stated purpose.

Mr. FORD. Would the gentleman yield?

Mr. ASHBROOK. Yes.

Mr. FORD. Isn't that the anomaly of the *Denver Building Trades* case here? We have an activity that is not illegal because of the reason for the picketing or because of the purpose to be accomplished by the picketing but because of the place where it takes place?

In other words, getting back to the title of this bill, the common situs picketing problem, it is not the motivation of the union in attempting to secure the work or to assure that the work is done by union employees that is illegal. It is the place where they carry on the picketing activity that is illegal. That is the peculiarity that sets this apart from any other similar activity under the National Labor Relations Act.

Mr. ASHBROOK. A quick response to the gentleman from Michigan would be that I completely agree with you and Mr. Thompson that the Denver situs decision has gone too far in the one direction; that any legal activity of a union has been stretched to where any unintended conditions have been used against them and I think it has gone too far.

I think what we are seeing now is an effort to go the other way and I am looking for some balance in between now.

Mr. THOMPSON. We have to sit down with you privately.

Secretary SHULTZ. If I may just make a comment here, and your comment about too far this way and too far that way, and so on, you can have a polar position over here and a polar position over there and then in between when you try to describe these in-between places, you basically do it in the form of various kinds of so-called safeguards. H.R. 100 has some so-called safeguards or whatever you want to call them in it and I am proposing some others, some the same, some different, some differently formulated. Just where they put this line and spectrum between these poles is a little bit hard to say, but at any rate it is an effort to move to some position of rough equity.

I might just say I consider myself to be a Secretary of Labor interested in all unions and all workers and blue-collar workers and white-collar workers and I would even worry about executives in executive suites although I don't think we need worry too much about them, but employers in the work place, and I am certainly concerned with the nonunion employee and his rights.

Mr. THOMPSON. Mr. O'Hara?

Mr. O'HARA. Mr. Secretary, I have examined your testimony and it seems to me that it raises more questions than it answers and I would like to ask you some questions with respect to some of the questions you have raised in order to clarify them.

As you know, and as Mr. Ford suggested, H.R. 100 is essentially a legislative effort to reverse the Denver Building Trades decision which held that the employers on a construction site other than the one contractor or subcontractor who might be struck were neutrals vis-a-vis the struck contractor or subcontractor.

The bill takes the position that they are not neutrals; that is, if they are jointly engaged as joint venturers or in the relation of contractors and subcontractors, they have a community of interest. In essence that is all we are trying to do.

We are not trying to give the building trades any special privilege. We are saying we think the court was wrong in the *Denver Buildings Trade* case.

Under those circumstances, it seems to me that a jurisdictional dispute in the construction trades ought to be treated the same as a jurisdictional dispute in any other labor-management relations question.

But you are proposing, are you not, a special remedy in jurisdictional disputes where common situs picketing is involved?

Secretary SHULTZ. No, sir; I am just proposing that the present arrangements as they have been worked out as a result of court and Board decisions with respect to jurisdictional disputes should not be upset.

I think if the impact of H.R. 100 were to mean that the Board was not required to go for a temporary injunction immediately in the case of a jurisdictional dispute, that would be too bad.

I would be opposed to that. I think that if you are not careful in just how this is done, you could in effect change the situation insofar as jurisdictional disputes is concerned and I would oppose that.

That is why I explicitly went into a little bit of detail about that under the general principle of not changing something presently illegal into something legal.

Mr. O'HARA. But the net effect of the change you suggest would be that jurisdictional disputes would not be subject to a mandatory, immediate injunction in any case except one involving common situs picketing.

Secretary SHULTZ. No. I think if you simply reversed the *Denver Building Trades* case, or, to put it more directly, if you stated that one should regard all employers on a construction site as being engaged in a joint venture, as you put it, so they are related for all purposes, then I believe it would be true that in the event of a jurisdictional dispute, it would not be possible for the Board to seek an injunction or get an injunction, and I would be opposed to that change.

As I said earlier, I am not a lawyer and the ratcheting back and forth between various provisions of this act bewilders me to some extent, but it is the interaction between 10(k), the case of the jurisdictional dispute and the definition as the result of the *Denver Building Trades* case as the dispute being interpretable as a form of secondary activity which gives the Board the ability to go into court for an injunction in order to stop that dispute and I think it is quite essential to maintain their power to go in and stop jurisdictional disputes.

Mr. O'HARA. I don't want to belabor the issue, but I think the difference is between a mandatory action and one which is not, by its nature, mandatory.

Secretary SHULTZ. I would just as soon leave it mandatory.

Mr. O'HARA. I think that would create the distinction I spoke of.

If we could go on, you suggest that you don't want to make anything lawful that is presently unlawful, transforming illegal activity into legal activity, and you speak of discriminatory objectives.

The bill as drafted says, "And there is a labor dispute not unlawful under this act."

It seems to me if we write in specific language with respect to discrimination, we are raising a question with respect to the lawfulness of a labor dispute in pursuit of discriminatory objectives in every other area of labor relations.

We have taken the position that a labor dispute in pursuit of discriminatory objectives is already unlawful under the act. If you were to write into this bill a specific provision that would follow the language I just stated and say not only unlawful disputes but those in pursuit of a discriminatory objective, are you not then suggesting that dis-

criminatory objective, and if everyone is satisfied that is the case National Labor Relations Act as it now stands? If that is not the case, why is special language needed?

Secretary SHULTZ. I think it is just that the common situs picketing gives an extra measure of power to the construction unions, and I would just like to see the legislative drafters carefully examine, and again I am not equipped to deal with the intricacies of the law and the Board case history in a great deal of detail, but I would just like everybody to be assured that this extra measure of power cannot be used for a discriminatory objective, and if everyone is satisfied that is the case without any special language, okay, but I would like to be sure that it is considered carefully.

Mr. THOMPSON. The aspect of discrimination has been considered very carefully in the past and not only within the context of the Taft-Hartley Act but with relation to the 1964 Civil Rights Act. The major civil rights leaders, 2 years ago, joined in announcing their support of this legislation as it was drafted.

The gentleman from New York, Mr. Reid.

Mr. REID. Thank you, Mr. Chairman.

Mr. Secretary, I am very happy to welcome you here this morning and I appreciate the character of your testimony.

On page 15 at the end of your testimony, Mr. Secretary, you indicated that the Department has been meeting with employer and union groups to assist in arriving at solutions on the situs picketing issue.

Secretary SHULTZ. No, sir; I did not say that—on other issues, not on common situs picketing.

Mr. REID. Do you intend to submit specific legislation as an administration bill on situs picketing?

Secretary SHULTZ. No, sir; the stance in this testimony is to say here are some guiding principles as we see them and we think they might be helpful in the discussion of this issue. I would like to discuss this along with you. It is complicated. We want to see if we can work out a solution to an area that has been very troublesome over the years. The purport of the comment about meeting with industry and union groups is that we had a few meetings. They have not accomplished a tremendous amount but it is an effort to sit down with the parties and think about some of the problems in the industry. I think there has been some progress. You might notice if someone says common situs picketing or just CSP the whole place goes up in smoke. It would be good if we could get this resolved and get on to some of the other aspects of the industries' problems that I think are very important, serious, and difficult.

That is the general stance here rather than coming in and saying here is a solution as we see it. We have tried to recognize that this issue has been around a long time and it has been worked on by all sorts of people and there must be rooms full of testimony on this matter and rather than coming in endorsing this, that, and the other, we want to come in with general ideas.

Mr. REID. I understand that and I appreciate the sense of your testimony and what I understand to be the thrust of your policy but as your testimony makes plain this is a matter that has been before the Congress since the time of President Eisenhower and it has enjoyed bipartisan interest and support as well.

Do you anticipate subsequent to these hearings and other discussions that you might appropriately have to come forward with some specific recommendations for the committee's consideration in an effort to help resolve the matter with some degree of decisiveness?

Secretary SHULTZ. If that seemed appropriate and useful we could do that.

Mr. REID. I think an administration position on this at some point might be helpful.

Mr. THOMPSON. The Secretary indicates the administration's support of the principle of correcting the *Denver Buildings Trades* case and then the Secretary sets forth some principles which he thinks ought to be considered in the course of it.

He says in his statement that he does not approve specifically of H.R. 100 as it is drafted and I believe he is suggesting the possibility of an accommodation so that we can get on with this solution.

Secretary SHULTZ. I am sure there are some very important issues raised and it is already apparent through the questioning there is not complete agreement on these principles. I am not trying to indicate that such things as product boycotts are inconsequential. I think they are very consequential.

Mr. REID. I have one other technical question I would like to ask. Mr. Secretary, on page 3, your bottom principle letter D, the bill should include language amending section 301 of the National Labor Relations Act to permit the enforceability of contracts by injunction.

I am apprised by counsel that unlawful secondary boycotts are presently enforceable by injunction, and my query would be, in addition, whether you want to relate that question, whatever the merits, to a situs picketing bill? It is a somewhat separate subject and a fairly broad one.

Secretary SHULTZ. It is broader than the construction industry, of course. At the same time it would seem to me that since one of the purposes for which a union might picket would be a contract and in the construction industry the whole time problem is of such special importance that one should recognize this in a total package and provide for injunctive relief in the event of a strike in violation of the contract.

I would make the argument across the board that this would be an equitable thing to have happen. I don't really see why there should be any objection to enforcing agreements that have been arrived at voluntarily. But I think it has particular relevance to the construction industry.

Mr. REID. Thank you very much, Mr. Secretary, for the care with which you prepared the testimony and I am sure all of us will give it closest consideration.

Mr. THOMPSON. Mr. William Ford?

Mr. FORD. Mr. Secretary, I would like to join with the gentleman who preceded me in complimenting you on the stand you have taken. It is consistent with that of your predecessors on principle and in recognition of the special problems of some workers in this country arising out of a specific decision by the courts. I join with Mr. O'Hara, however, in recognizing that while your statement is a very fine, scholarly presentation of the problem, it leaves us with a problem in terms of what the position of the Department of Labor, with its prestige and its resources, will be in looking toward a solution to these problems.

I think that you have done a fine job of putting the problem into perspective in the kind of language that people can understand.

As you indicated, one thing that has disturbed many of us is that this issue has been around for so long that people are polarized, are either for or against "situs picketing" to such an extent that they talk in cliches. It has been a long time since anyone has taken the time that you obviously have to study the history of the problem and to try to put it down in an orderly fashion, so it can be taken apart and examined.

With regard to the question Mr. Reid asked on your intention to present specific legislation, your testimony indicates that at the present time, although you endorse the principle of this legislation, you could not endorse the legislation before the committee. You also indicated that at the present time you have no intention of proposing a specific piece of legislation.

Could we ask you if, using your resources—and I am told that you have some hot-shot lawyers over there at the Department of Labor—

Secretary SHULTZ. We certainly do—the best.

Mr. FORD. With that tremendous pool of talent, would you be willing to suggest some specific language that might be utilized by this committee in solving each of the problems that you have raised here? That does not constitute you submitting a bill known as the Secretary of Labor's bill on situs picketing. But it does constitute a reasonable exercise of the responsibilities of your office to give us direction on how to put into proper legal language the solutions to these problems on the basis of the special expertise that your staff might have available.

Secretary SHULTZ. I am sure we could provide that kind of legal help to people as they are trying to sort out their ideas, as a minimum. But I would like to come back to emphasis on the ideas themselves, and what do people really think, and point out, if I have not misread the comments here, that the chairman, if I understood him correctly, agreed with the position I took on the importance of maintaining the ability to enjoy jurisdictional disputes.

But Congressman O'Hara, unless I misread him, did not, and I think it is sort of at that level, the ideas, what are the things that we are trying to accomplish here, and we have to sort them out and once we have them then maybe somebody can put some language together that helps it. If we place the argument into the context of whether this word should go here or there, it obscures the question of what is it exactly in commonsense terms that you are trying to accomplish.

I would like to keep the emphasis on the commonsense terms for a while.

Mr. THOMPSON. If the gentleman will yield, on the question of injunctions and section 10 of the act, it is a fact, Mr. Secretary, as you know, that the Board invariably gets injunctions against jurisdictional disputes.

The language, however, is not mandatory. It says in situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to 8(b) (4) (D).

Mr. O'HARA. It is the difference between 10(k) and 10(1).

Secretary SHULTZ. That is right.

Mr. O'HARA. And you would have all jurisdictional disputes other than on building sites subject to 10(1) and the ones on building sites subject to 10(k). That is the point I was trying to make earlier.

Secretary SHULTZ. I don't know that I really want to try to read this at this point. I do think this is an important point and, as I said, if you simply pass a law saying employers on construction sites are to be treated as allied for all purposes, then you would have made a change in the present legal structure under which jurisdictional disputes are settled, and I would be opposed to making that change. But I think there is a division in the house about that.

Mr. FORD. Mr. Secretary, I understand your principal concern to be with the kind of activity on a building site as distinguished from some other type of activity in this country.

You rely on the viewpoint, which we have heard so frequently, that work at a building site is something terribly special because time is of the essence there. I think it might come as a terrible shock to the management of any one of the automobile companies in our area to learn that time was more of the essence on a building site than it was in meeting their production schedule. If one of the component plants of the Ford plant which is essential to meeting a new model deadline is involved in a labor dispute, the new model does not meet the production schedule and the impact on the employer is a very devastating one. It seems to me that anything you would say about time being of the essence giving rise to special consideration would apply not only to building sites and the automobile industry but many, many more.

As a matter of fact, it is really very difficult to find any place, with the complexity of modern industry, where time is not of the essence.

A perfect example is all of the contractors who deal with us as a Federal Government in our defense program and in our space program. Just imagine the consequences, and they have been considered in previous instances by this committee, of any component part of the space program being involved in a stoppage and its impact on the entire program or any component part of defense procurement.

We cancel contracts promptly and with penalties where, just as in the building and construction trades, there is not performance on time. So, it seems to me we ought to try to get over that hurdle. I would hope that when your lawyers are helping you consider some solutions for us you will not continue to be "hung up," the issue of time being of the essence.

Secretary SHULTZ. I think your point in time is not only of essence in construction but other places as well and that tends to support the importance of injunctive relief in the event of jurisdictional disputes and violations of a contract wherever they occur, and I go along with you on that.

Mr. FORD. Thank you.

Mr. THOMPSON. Mr. Dellenback, before recognizing you, I draw attention to the Secretary's bow tie which I understand is in your honor.

Secretary SHULTZ. I wore one some months ago and got kidded about it and every time I show up without one I get worked over by Congressman Dellenback.

Mr. REID. You join the sartorial elegance of my colleague from Oregon.

Mr. DELLENBACK. That is not always the phrase that is applied to it. I appreciate the comments by the chairman and the Secretary.

Mr. Secretary, may I start by saying I have found your testimony both before us this time and on prior occasions before this occasion and its subcommittees refreshing, because I am concerned that too often in this Congress we start from preconceived opinions and the only purpose of having witnesses apparently is to get them to support in preconceived language, preconceived opinions, and it is not really a case of trying to get ideas that the Congress can wrestle with and use as basic building blocks to come up with the best possible legislation.

Too often, and this is not confined to one party, we seemingly have witnesses who are locked in and support positions and we have positions that we have already arrived at and are polarized. I found today your attempt to take this issue and reduce it to principles and then proceed from the principles to what we do legislatively is the identical approach you used when you testified before another subcommittee of this committee on the Job Corps where, again, in a controversial, inflamed field, instead of arguing up on the surface somewhere, you attempted to take us back to basic principles and applied those principles to the facts of the situation. I really cannot commend you too strongly for what I think is a very important and very helpful contribution to the legislative process.

I wish we did this more frequently and I wish we of the Congress were open minded, as open minded as your approach has shown you to be, to give us the building blocks to work on the raw material to arrive at legislative language.

While I am saying this, may I commend particularly the chairman and Mr. O'Hara and Mr. Ford because in my past dealings with them on this committee and in other subcommittees of this committee, I think we have in these three people gentlemen who are really concerned in this process of having subcommittee hearings at trying to get at what the issues are so we can have discussion of the issues. And if we find the testimony of an expert nature given to us and if we find the argument of our colleagues on our own side of the aisle or other side of the aisle where we start the discussion, these gentlemen in my experience over the past several years have been willing to talk with us and I hope we have demonstrated an interest in reciprocating on this.

I think your opening statement was fine, Mr. Chairman, and your comments about commending the Secretary for helping us along this line are excellent statements, and I commend you for them.

Mr. THOMPSON. Thank you very much, on behalf of all three of us.

Mr. DELLENBACK. I did not mean it does not hold for the other three members—

Mr. THOMPSON. Mr. Burton is here.

Mr. DELLENBACK. Not as a member of the subcommittee and I am confining my remarks to the members of the subcommittee with whom I have had dealings. I do not mean to discriminate against the other members of the subcommittee.

Mr. BURTON. If you are seeking unanimous consent, I agree, even though I don't have a vote.

Mr. DELLENBACK. It seems to me, Mr. Secretary, as you pointed out, what we have here is an attempt to equity in a complex field and a unique field.

It has been battled for many years as your testimony shows and any of us who have studied the issue know how complex it is and we know how unique it is.

It is not just a simple problem and it is one in which emotions run high. I would be inclined to say to the chairman I am not sure, and I certainly think I would disagree with you and I am not sure you are right when you commented that we ought to confine our concerns to situs picketing alone.

It does not seem to me this is an issue which exists in a vacuum. We have here a clear demonstration, if you read back over this issue, that this issue of common situs picketing is very much related to methods of enforcing contracts—damages versus injunctions which the Secretary has referred to. It is very much related to the issue of product boycott. It is very tied and related to the relative economic positions of employers and employees and the relative economic positions of various unions and these issues I think are very much interrelated, and I think the bringing out of some of the points that the Secretary's testimony has brought out which goes beyond the narrow point of what we refer to as common situs picketing is very helpful to us as we attempt to solve what has been a very thorny problem. If we are going to solve this thorny problem this committee and the House will have to go beyond the narrow limits of the discussion which has been indicated in the past.

Mr. THOMPSON. The chairman was not trying to indicate a lack of awareness or concern with other matters of great importance which need attention in the act. The chairman was simply trying to indicate that this particular piece of legislation is a very narrowly drawn one and is aimed at one specific issue.

I recognize the relationship of the so-called product boycott and everything else which is related to this, but I don't want to open up the whole act.

Mr. DELLEBACK. It may be that one or more of these points will have to be clarified so we don't open up the whole act but the point I would make, the legislative history in attempting to deal with common situs has floundered time after time. If we can do it without opening up the whole act I would hope as we consider this whole issue and try to resolve it that we recognize its complexities so that we go beyond the normal, very narrow past consideration of the issue and look and see whether or not, without opening up the whole act, we cannot broaden and concern ourselves with should anything be done with product boycott? Should anything be done with these allied problems?

I really have not done a very good job of questioning you, Mr. Secretary, because I wanted to make these comments which I have made. I find your testimony very useful and I will be listening carefully to the other witnesses and I commend the chairman and the ranking members who selected witnesses, who if we look at the list, show a diversity of interest and approach.

I would hope after we have had occasion to meet with them that we could meet with you and the specialists in your field so that maybe we can reduce the conclusions to which the committee has come into specific language. I don't think at this time it is mandatory or obligatory that you come up with specific language because I think your point is sound.

We must first sort out the basic issues, come to conclusions on ideas and then reduce them to language.

Thank you, Mr. Chairman.

Mr. THOMPSON. Mr. Stokes.

Mr. STOKES. Thank you, Mr. Chairman.

Mr. Secretary, may I direct your attention to page 5 of your prepared remarks? This is a section in which you say is the problem of racial discrimination in some building trades unions would be intensified by the bill should it pass in its present form in that it will allow the secondary boycott weapon to be used by unions who want to enforce discrimination.

Would you be kind enough to amplify those remarks or elucidate a little more so I may understand your position?

Secretary SHULTZ. Those were not my remarks. That was a quotation. I believe the quotation bears the date of approximately 1960. It was a quotation from Congressman Kearns in his comments on an earlier bill and expressing some of his reservations. The intent of this and other things I have talked about was to show how in the history of consideration of this whole issue various other issues have arisen from time to time, so the Congress having started to grapple with what looked like a relatively simple matter of turning the *Denver Building Trades* case around found as it got into it, as time went on, as new court decisions were made, as various changes in the industry took place found it had to grapple with a whole range of issues that came along. That was the purpose of that section.

Mr. STOKES. With reference to this, do you subscribe to this?

Secretary SHULTZ. I think I put forward as one of the principles that it seemed to me that you should keep in mind as you try to come to grips with this, the notion that according whatever extra measure of power is given to the unions by the common situs picketing, and I think that the safeguards have some give and take and I don't know how you come out in balance, but in providing for common situs picketing, you should look at the law to see that you don't set up a situation where common situs picketing becomes used for a discriminatory objective.

I am not saying it is or would be but, as you know, this is a problem that has been around for a long time and I just think a little extra care should be exercised. That was one of the principles in my statement.

Mr. STOKES. At page 8 you mention concern that common situs picketing might be used to frustrate Federal policy to alleviate the effects of racial discrimination.

May I ask you this: Do we have enunciated a Federal policy in this regard?

Secretary SHULTZ. We have a lot of different things that are enunciated in this regard, yes.

Mr. THOMPSON. If the gentleman will yield, the bottom teeth at least were supplied by the 1964 Civil Rights Act. Since 1960 in a number of instances the Board has made considerable progress in the area of discrimination and in prohibiting it.

Mr. STOKES. With reference let us say specifically to the Department of Labor in light of the fact that the Department does not have any bill to submit in this area, can you tell us of any specific steps your Department has in this regard to eliminate discrimination in these industrial settings and in the construction area?

Secretary SHULTZ. The Department does have responsibility for the administration of the Office of Federal Contract Compliance in which we work with other departments of Government to bring about equal employment opportunity, affirmative action toward that end, in terms where Government contracts are in effect.

Mr. THOMPSON. In addition, Mr. Secretary, you have jurisdiction over the apprenticeship programs as well

Secretary SHULTZ. I think that one can broaden this out, the whole range of manpower programs provides a way, as we discussed yesterday, of providing upgrading possibilities. I might say that in terms of the administration of the OFCC as I would envisage it, we could well see the use of manpower programs as part of encouragement of affirmative action programs.

So I think that one can see relationships in the various parts of the Department's work but the OFCC is one particular part, and I think you have to look close to home first and say what about within the Department. Are we governing our own hiring and promotion and so on policies in a fair and equal way. We are certainly trying to do that.

Mr. STOKES. I have just one further question. You mention contract compliance and those kinds of provisions. Under your administration, can we expect very strict enforcement of laws relating to compliance in this respect?

Secretary SHULTZ. Yes.

Mr. STOKES. Thank you.

Secretary SHULTZ. I might say I think it is important to enforce the law and in addition it is important to go about the process of enforcing the law and using the tools that are given to you so that you get results in the work place. That is the end objective and that is what we are seeking, and I think it may be that contracts will have to be canceled or requirements made, but that is not the purpose.

The purpose is to produce results in the workplace, and that is what we are driving at.

Mr. STOKES. Thank you, sir.

Mr. THOMPSON. Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman.

May I also join my colleagues in expressing appreciation for what has been a very thoughtful and very constructive statement. I might mention that many years ago when I was in law school, the *Denver Building Trades* case was handed down and I made an analysis for it, not realizing many years later when I would arrive here the case would still be in front of us.

Mr. THOMPSON. What conclusions did your study at that time reach?

Mr. HANSEN. I think you could have predicted that it would be difficult to pick our way back from that case, but I had not realized it would be as troublesome as it has proved to be.

I think your statement provides a very useful beginning point for what I would hope now would be a permanent solution.

I had one specific question relating to some of the safeguards to which you made reference in your testimony. One additional safeguard that I am wondering about that should not be covered in some legislation is that of defining in some way a construction site to achieve some kind of geographical or other kind of limitation.

I would draw your attention specifically to some dispersed construction sites, some installations on which there is construction activity at

various remote points, some times separated by several miles and ask you if there is anything in the existing law, which I am unable to find in the way of definitions, or if you don't think that there should be something which would limit in some way geographically the affect of picketing at any given point on a construction site?

Secretary SHULTZ. I don't know quite how to respond to that. Certainly one should not define a construction site as any location where a given contractor was working no matter where it was at a given moment of time, because then you would be setting up all of this ratcheting of secondary pressures.

I do not quite visualize the case that you have in mind, but I can see that as you try to compress this in more closely there may be some issues arise which you would have to examine. I do not know how I would quite think my way through that.

Mr. HANSEN. Let me mention a problem which I think we have to face in trying to arrive at a solution here.

In the State of Idaho near where I live we have a National Reactor Testing Station operated by the Atomic Energy Commission and various contractors who operate parts of it. While this would be the kind of installation that is subject to some of the limitations that are incorporated in this bill; nevertheless, the question occurs to me, Is it possible that the entire site, all construction activities could be closed down by a dispute at one point on that installation, even though it may be removed by 10 or 15 miles from other construction activities on the same single installation?

Secretary SHULTZ. I hate to get into this kind of discussion because I really do not know my way too well, but, if you had the Atomic Energy as taken in your case and you had this huge geographic area involved in your locations and at that site there were various types of construction work going on, and over here they were building something and unrelated over here they were building something, I should think these would be two different construction sites.

It is not so much the Atomic Energy Commission site that we would be talking about as the construction project site, I would think. I recognize that I am not really being too responsive.

Mr. THOMPSON. If the gentleman will yield, I believe the answer can be found on page 3 of the bill, line 9, where we say, "At any site ownership or control of such site by a single person shall not be the only factor considered."

Mr. HANSEN. What I am suggesting—

Mr. THOMPSON. That is determining where several employers who are in the industry are jointly engaged as joint venturers.

Mr. HANSEN. I would agree with the logic of your analysis, but it would seem to me that it would be useful in some way to incorporate that by some type of legislation. I just raise this as being one of the troublesome problems to which I think we should address ourselves in trying to find the solution.

I think that your basic approach is sound. Instead of submitting a proposed bill, it is better that you furnish drafting talent, other resources, and your good office to assist this committee in trying to reach that middle ground to try to develop a solution at long last to a problem that we have been facing.

Thank you very much, Mr. Secretary and Mr. Chairman.

Mr. THOMPSON. Mr. Clay.

Mr. CLAY. No questions, Mr. Chairman.

Mr. THOMPSON. Mr. O'Hara has another question.

Mr. O'HARA. I will not take a great deal of time, Mr. Chairman.

I would like to ask you to submit some answers to my questions. I will just phrase the questions and counsel can communicate with you.

First, I take the position that picketing in support of a racial objective is already illegal under the National Labor Relations Act. If it is not now illegal, then we need remedial action far stronger than some phrase with respect to common situs picketing. We need something considerably more than that.

I would appreciate any examples you have of "racial" picketing.

Secondly, with respect to separate and independent contracts for State or municipal projects under State law, I would like you to describe in more detail just the kinds of State laws you have in mind. If indeed we have separate and competitive bidding on each phase of the contract, I don't think it could be claimed that the contractors bring in the relationship of joint venturers to principal and sub.

But if you mean a simple State statute that said in spite of the fact that the contractor selected the subs and negotiated with the subs, that as a matter of law on all our jobs the contractors and subs shall be considered to be independent of each other, that is a different situation entirely. I want to make sure one cannot get out from under the provisions of the bill by such statutory enactment.

We discussed earlier my reservations on the matter. I guess I would let it go at that and I want to take a moment to apologize to you. I think you have presented a very fine and reasonable statement here, but you have touched some sore points.

We have been going over this legislation, as Mr. Hansen suggests, ever since I have been in Congress and we keep going over it and it seems to me I spend some time every year trying to kill some snakes somebody has dug up in connection with the bill and each year I go through the same exercise all over again.

Secretary SHULTZ. Every time you have a new Secretary of Labor you have to reeducate him.

Mr. O'HARA. I have gotten a little bit irascible about it and I want to apologize to you if I got irascible in any way.

Mr. THOMPSON. With respect to this legislative history, in leaving home this morning my wife asked me the business of the day and I said common situs picketing. She asked, "Will you have a career if you ever get rid of that thing?"

Secretary SHULTZ. So that explains it.

Mr. DELLENBACK. Since there have been several allusions by the Chair and others to the principles of H.R. 100, in my last comment may I call attention to the Secretary's opening paragraph where he says he is here to indicate his support for legislation of legalized common situs picketing if that legislation is carefully designed to incorporate appropriate and essential safeguards and in any statements about the support of the Secretary for this legislation we ought to all keep in mind the proviso that is clearly a part of his paragraph.

Mr. THOMPSON. Thank you for clarifying the Secretary's position. Thank you, Mr. Secretary very, very much.

(The Secretary of Labor submitted the following answers to the questions asked by Mr. O'Hara:)

QUESTION NO. 1—DISCRIMINATORY OBJECTIVE

No provision in the National Labor Relations Act expressly prohibits racially discriminatory picketing. However although the Act is silent it would be interpreted to make such picketing unlawful in some situations. For example, where a labor organization representing an employer's employees pickets that employer to force him to discriminate on racial grounds against certain members of the bargaining unit, the union is unlawfully violating its duty to represent all unit employees fairly. See e.g., *Vaca v. Sipes*, 368 U.S. 171 (1967); *Independent Metal Workers Union Local No. 1*, 147 NLRB 1573 (1964); *Locals 1367 & 1368, International Longshoremen's Association*, 148 NLRB 897 (1964), enforced, 368 F. 2d 1010 (CA 5, 1966) cert. denied 389 U.S. 837; *Local No. 12, United Rubber etc. Workers*, 150 NLRB 312 (1964), enforced, 368 F. 2d 12 (CA 5, 1966), cert. denied, 389 U.S. 837; *Truck Drivers and Helpers Local Union 568 v. NLRB*, 379 F. 2d 137 (CA 5, 1966), cert. denied 389 U.S. 837.

In addition, racially discriminatory picketing has been enjoined in certain situations where another objective proscribed by the NLRA was present. An actual case is illustrative. In December 1965 and January 1966, a dispute arose over the construction of the Visitors Center at the Gateway Arch in St. Louis. There, in order to meet the affirmative action obligations under Executive Order 11246, the general contractor awarded a subcontract to a plumbing contractor who employed 3 Negro plumbers. As a result, the AFL-CIO Building and Construction Trades Council of St. Louis voted to boycott the construction project. When the plumbing contractor came on the site, all AFL-CIO building trades unions walked off the job. The construction work continued only after the NLRB obtained an injunction under Section 10(1) of the NLRA. The injunction was only available because the Gateway Arch picketing had the additional objective of forcing an employer to cease doing business with another employer and, therefore, was coincidentally an unlawful secondary boycott within the meaning of *NLRB v. Denver Building Trades Council*, 341 U.S. 675 (1951).

In another range of circumstances, however, picketing for a racially discriminatory object is not covered by the NLRA. For example, a labor organization representing a bargaining unit of employees at an employer's plant might picket to force the employer to discriminate on racial grounds against employees outside the bargaining unit, against job applicants for unit or non-unit jobs, or against supervisors or applicants for supervisory positions. In addition, a labor organization not representing employees of an employer might picket to force that employer to discriminate on racial grounds against certain of his employees or job applicants. In none of the foregoing situations is the picketing presently a clear violation of the NLRA. No provision of the Act expressly so provides, nor has the union violated its duty to represent fairly because it has not sought to enforce racial discrimination against any employee it represents.

As indicated above, in the Gateway Arch dispute the Labor Board was able to obtain an injunction because the picketing had the unlawful objective of forcing an employer to cease doing business with another employer. If H.R. 100, as presently drafted to broadly permit common situs picketing, had been the law at the time of the Gateway dispute, the Labor Board would have been unable to obtain an injunction under Section 10(1) of the NLRA, notwithstanding the picketing sought to enforce racial discrimination. It is my opinion, therefore, that any legislation which would permit common situs picketing should make crystal clear that Congress does not intend to legalize common situs picketing for a racially discriminatory purpose.

QUESTION NO. 2—STATE LAW REQUIRING SEPARATE CONTRACTS

With respect to the question on State laws requiring separate contracts on public works projects, let me make myself clear that consideration should be given only to such State laws that require separate bids and separate and independent contracts on State and municipal construction projects. There should be no accommodation made for a State law which merely deems, as a matter of law, contractors and subcontractors to be independent of each other.

QUESTION NO. 3—JURISDICTIONAL DISPUTES

There appears to have been some confusion over the intent of the safeguard I proposed concerning picketing in the context of jurisdictional disputes. Common situs picketing should not be used to victimize an employer when the real dispute

is between two unions as to which should perform certain work. If Congress legalizes common situs picketing in the construction industry, it should be made clear that it does not thereby intend to inhibit the Labor Board in obtaining injunctions when picketing is in furtherance of jurisdictional disputes.

I recognize, of course, that the language of H.R. 100 attempts to grant a qualified privilege to construction unions to engage in picketing of an entire construction site. One condition to the exercise of that privilege is that such activities, in the words of H.R. 100, not be "otherwise unlawful under this Act". However, lawyers argue and the Supreme Court recognizes that "otherwise unlawful terminology" is subject to more than one interpretation. *United Steelworkers of America, AFL-CIO v. NLRB*, 376 U.S. 492, 502 (1964). Does "otherwise unlawful" include a situation where picketing is in violation of 8(b)(4)(D)? I believe it should be made certain that H.R. 100 will not encourage picketing for jurisdictional reasons.

In order to avoid such undesirable misconstruction, any common situs legislation should insure that when labor organizations are engaged in a jurisdictional dispute, a probable violation of 8(b)(4)(D) will deny them the new privilege of picketing the entire site. Presently, the Board has discretion to seek a 10(1) injunction where a probable violation of 8(b)(4)(D) is involved, but only after ten days have elapsed after the filing of a charge, as provided in Section 10(k). However, where jurisdictional picketing also involves a probable violation of 8(b)(4)(B), it is mandatory that the Board seek a 10(1) injunction immediately. In such circumstances, an employer need not endure ten days of unlawful picketing before an injunction can be obtained.

If H.R. 100 were enacted as presently drafted, it could be construed to deny an employer the relief of an immediate 10(1) injunction where common situs picketing is employed in an interunion dispute. Thus, even assuming jurisdictional picketing were regarded as "otherwise unlawful", the Board might interpret 8(b)(4)(B), as amended by H.R. 100, to require an employer to pursue 8(b)(4)(D)-10(k) procedures to obtain a Board determination of whether picketing arises out of a dispute which is essentially jurisdictional in nature. If this were the case, instead of being able to obtain immediate 10(1) relief for a violation of 8(b)(4)(B), an employer would be forced to endure ten days of jurisdictional picketing during the waiting period set forth in 10(k).

Because of the great potential harm such picketing can cause neutral employers, Congress should provide that common situs legislation is not intended to grant construction unions a new weapon in jurisdictional disputes or to deprive employers of presently available immediate 10(1) relief from common situs picketing in such situations. To insure this result, Congress should require the Labor Board to seek immediate 10(1) injunctions where an 8(b)(4)(B) charge is filed and there is "reasonable cause" to believe that common situs picketing is the result of a dispute between unions over certain work. Such a determination should not be conditioned upon an employer's resort to 8(b)(4)(D)-10(k) procedures. The desirable net effect of such a provision would be to deny amended 8(b)(4)(B) privileges in jurisdictional disputes. Appropriately, contractors and subcontractors at a construction site, who under present law are deemed to be neutral in interunion disputes, would retain their neutral status and rightfully continue to avoid the harmful effects of jurisdictional common situs picketing.

(Mr. O'Hara submitted the following comments on the Secretary's answers:)

QUESTION No. 1—DISCRIMINATORY OBJECTIVE

In my opinion, Secretary Shultz's discussion of picketing for racially discriminatory objectives is based on an unacceptable premise—that H.R. 100 should be addressed to objectives beyond the limited one of reversing the *Denver Building Trades* decision. If the Secretary's conclusion that the Labor Act does not cover picketing for a racially discriminatory object in some circumstances is correct, I believe separate legislation to prohibit such picketing is necessary. I do not believe that H.R. 100 is the proper vehicle to do this; H.R. 100 is intended to deal with only one narrow situation arising under section 8(b)(4) of the Labor Act.

But my understanding of present law differs from the Secretary's. The Secretary admits that the Labor Act imposes a duty of "fair representation" upon the union, and that it is illegal for a union "representing an employer's employees" to picket that employer "to force him to discriminate on racial grounds against members of the bargaining unit." But the Secretary's memorandum indicates

that this is the extent of the Labor Act's prohibition against union racial discrimination, and that there is no prohibition against action hostile to workers not in the bargaining unit. Thus, the Secretary's memorandum alleges that a union is not prohibited by the Labor Act from picketing "to force the employer to discriminate on racial grounds against employees outside the bargaining unit, against job applicants for unit or non-unit jobs, or against supervisors or applicants for supervisory positions."

It is my understanding that these hypothetical situations of racial discrimination are already prohibited by Title VII of the 1964 Civil Rights Act. Section 703(c) (3) of that Act makes it unlawful for a labor organization to cause or attempt to cause an employer to engage in a broad category of racially discriminatory acts. If this Civil Rights Act is deficient in coverage or enforcement procedures, it and not the Labor Act is the appropriate statute to be amended to ensure that racial discrimination by labor organizations is illegal.

I further understand that the National Labor Relations Act prohibits the practices in these hypothetical situations, and that the National Labor Relations Board has expressly held that it is an unfair labor practice for a union to force an employer to discriminate against Negro employees in a sister local union, *Local 1367, International Longshoremen's Association*, 148 NLRB No. 44; that it is illegal for a union to cause the employer to discriminate against employees newly brought into the bargaining unit on racial grounds, *International Union, United Automobile Workers and Amalgamated Local 453*, 149 NLRB No. 48; and that it is illegal for a union to cause an employer to discriminate on racial grounds against job applicants. *Local Union No. 2, United Association of Journeymen of the Plumbing and Pipefitting Industry*, 152 NLRB No. 114.

The Secretary's memorandum further alleges that in the St. Louis Arch situation the AFL-CIO Building and Construction Trades Council of St. Louis voted to boycott the construction project "as a result" of the award of a subcontract to a contractor who employed three Negro plumbers. This allegation does not accord with my understanding of the St. Louis Arch situation.

There the U.S. Department of Justice filed suit against the Building Trades Council and certain unions alleging that defendants had engaged in a pattern and practice of racial discrimination in violation of Title VII of the 1964 Civil Rights Act. The District Court dismissed the Title VII suit, finding that "the record is devoid of any specific instance of post-Act discrimination," and holding that "the evidence presented by the Government does not substantiate its allegations that defendants have violated the Civil Rights Act of 1964 * * *" *United States v. Sheet Metal Workers Local 26, et al.*, 280 F. Supp. 719 (E. D. Mo., 1968).

In the Labor Board proceeding, the Board held that the union's activity was an unfair labor practice, but found that the underlying motivation for this activity was the long-standing policy of the Trades Council and its affiliated locals "of not working on construction projects unless 100% AFL-CIO," and not racial discrimination. *Smith Plumbing Co.*, 164 NLRB No. 40 (1967). And although the trial examiner concluded that the Negro tradesmen at the Arch lacked AFL-CIO trade union affiliation "because of the failure of craft unions in the past to furnish a meaningful number of Negro workers apprenticeship training sufficient to permit them to become journeymen plumbers, and to make them eligible for union membership * * *," the Labor Board, in a unanimous decision, *expressly rejected* this conclusion. *Smith Plumbing Co., supra.*, footnote No. 4.

I further understand that although the U.S. Department of Justice has appealed the District Court's decision to the Court of Appeals for the Eighth Circuit, it has abandoned the claim that the picketing was racially motivated.

QUESTION NO. 2.—STATE LAW REQUIRING SEPARATE CONTRACTS

The purpose of H.R. 100 is to recognize the economic reality of the construction industry—that the prime contractor coordinates the entire process, and accepts bids from subcontractors with knowledge of, and even because of, their labor politics. It therefore makes no sense to treat a contractor and a subcontractor as separate "individuals" for purposes of the labor relations on a common construction site.

Secretary Shultz testified that the proposed Common Situs bill should not be applied to general contractors and subcontractors operating on state projects where state laws require direct and separate contracts. I enquired if the Secre-

tary had reference to state laws requiring separate and competitive bidding; or whether he also had reference to a state law which merely declared as a matter of law that contractors and subcontractors were separate entities.

Secretary Shultz replied that "consideration should be given only to such State laws that require separate bids and separate and independent contracts on State and municipal construction projects. There should be no accommodation made for a State law which merely deems, as a matter of law, contractors and subcontractors to be independent of each other."

QUESTION NO. 3—JURISDICTIONAL DISPUTES

Secretary Shultz makes two points in response to my question on jurisdictional disputes. First, he indicates that the present prohibition in H.R. 100 against picketing "otherwise unlawful under this Act" might not be interpreted to prohibit jurisdictional picketing which is presently unlawful under section 8(b) (4) (D) of the National Labor Relations Act. I myself do not see how words could be clearer. If there could be any doubt on this score, I hope this statement in the legislative history of H.R. 100 will alleviate the Secretary's fears.

Second, the Secretary fears that the present prohibition against jurisdictional dispute picketing is not strong enough. This is, of course, an issue entirely different from the one we deal with in H.R. 100. In any event, I do not share the Secretary's fear.

The Secretary states that he fears that the Labor Board cannot secure an injunction against jurisdictional dispute picketing until "ten days have elapsed after the filing of a charge".

This is not my reading of the Act.

Section 8(b) (4) (D) of the Act makes it an unfair labor practice for a union to force or require any employer "to assign particular work to employees in a particular labor organization or in a particular trade . . . rather than to employees in another labor organization or in another trade".

Section 10(L) of the Act mandates that the local officials of the National Labor Relations Board apply for an injunction against any picketing when it is charged (by an employer) that there is a violation of certain union unfair labor practices. Section 10(L) further provides that "In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b) (4) (D)." In short, the immediate application for an injunction is mandatory whenever a charge of jurisdictional picketing is filed with the local Board office "in situations where such relief is appropriate". There is nothing in either Section 8(b) (4) (D) or Section 10(L) which grants to labor unions a 10 day grace period for jurisdictional dispute picketing. The injunction is to be sought and enforced by the Court, while the separate administrative hearing on the merits is conducted by the Labor Board.

Section 10(k) directs the Labor Board to determine the merits of the jurisdictional dispute and to award the work to one of the contesting unions "unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute". This "ten days" period for the voluntary adjustment of the dispute by the parties (instead of by the Board) is unrelated to the separate and independent provisions of section 10(L) authorizing the immediate injunction against picketing while the underlying dispute is resolved either before the Board or by the parties themselves.

MR. THOMPSON. We will now hear the statement of our colleague, the Honorable Phillip Burton of the State of California.

STATEMENT OF HON. PHILLIP BURTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

MR. BURTON. Mr. Chairman and members of the committee, on the first day of this session I introduced legislation akin to that of H.R. 100 by our distinguished colleague, Congressman Thompson.

I am here today to testify in support of H.R. 100. As the members of the committee know, in the adoption of the Taft-Hartley Act in 1948,

Congress made an effort to protect neutral employers from labor disputes in which they were not involved.

Thus we find that section 8(b) (4) (B) outlawed secondary boycotts. This clause declares it to be an unfair labor practice for a union involved in a dispute with an employer to bring pressure upon another firm with which the employer is doing business. Much to the surprise of most impartial observers the Supreme Court in 1951 applied this secondary boycott clause to a labor dispute on a Denver construction job.

I am here to urge the adoption of H.R. 100 because it will eliminate this unexpected, unanticipated, and undesired interpretation of the language of the present statute wherein the work of many employers is integrated at a single site.

It is difficult, if not impossible to picket one subcontractor with whom a legitimate dispute exists without affecting the work of the primary or other subcontractors. Insofar as these effects are limited to a prime contractor and the subcontractors responsible to him they should not lead to a classification of the primary dispute as a secondary boycott.

As I stated before, H.R. 100 will correct this inequity by adding a simple proviso stating that the secondary boycott clause shall not be deemed to prohibit picketing or a strike on a construction site in the course of a lawful labor dispute if such action is not in violation of an existing collective bargaining contract.

Mr. THOMPSON. Thank you, Congressman Burton for appearing before this subcommittee.

Our next witness is the Honorable Jacob H. Gilbert. Congressman Gilbert represents the 22d Congressional District of New York.

STATEMENT OF HON. JACOB H. GILBERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. GILBERT. Mr. Chairman, and members of the subcommittee, thank you for giving me the opportunity to voice my support of H.R. 100 and my identical bill, H.R. 3092, to amend section 8(b) (4) of the National Labor Relations Act, with respect to strikes at the site of construction projects. Referred to as the "situs picketing bill," I have long been in support of this proposal to restore the economic rights of the building and construction trade unions.

I was disappointed when it did not reach the House floor in the 90th Congress, after being favorably reported and placed on the calendar. It was not the first time the bill had been favorably reported and then failed final congressional action. It has been before the Congress for many years, and it has had bipartisan support in both the Congress and the executive branch. Presidents Eisenhower and Kennedy supported it, as did President Johnson.

The bill is designed to correct an inequity in existing law whereby peaceful picketing by building trades at construction sites is prohibited while similar picketing at plants or factories is and always has been protected. It would simply give the building trades unions the picketing rights all other unions enjoy.

The main argument against the proposal is that a general contractor has no control over a subcontractor who may become involved in a labor dispute. I believe he does have control; he has control over the

quality of work, the time schedule, the quality of material. Buildings or construction projects are usually the products of the combined efforts of many firms working side by side at the site of construction. While they may not have a technical contractual relationship with each other, all these contractors do work together as a team and co-ordinate operations. Whatever label might be used to describe the relationship, there is still a direct connection between the various contractors. Because of this close relationship on the construction job, it cannot be said the contractors are "neutral" or "innocent" third parties as far as labor and industrial relations are concerned.

The report of the Committee for Economic Development in 1961 stated:

It is difficult, if not impossible to picket one subcontractor with whom a legitimate dispute exists without affecting the work of the primary or other subcontractors. Insofar as these effects are limited to a prime contractor and the subcontractors responsible to him, they should not lead to a classification of the primary dispute as a secondary boycott. The law should be changed to correct this inequity.

The employees of a factory can engage in peaceful picketing in a labor dispute, but construction workers are denied this freedom because of a technicality in the law which failed to take into account the nature of the building and construction industry where, instead of one employer with different departments for different kinds of work, there are numerous contractors on the job site doing different kinds of jobs—electrical contractors, bricklayers, carpenters, and so forth. If, for instance, the electricians union pickets a job site because of a dispute with the electrical contractor, and the carpenters, bricklayers and other trades do not cross the picket line, it is held that the electrical union is causing a secondary boycott in violation of section 8(b) (4) of the Taft-Hartley Act. Yet, it is legal for industrial unions representing employees of a factory to picket the factory site, even though employees represented by other unions in the factory refuse to cross the picket line. Since a union representing employees in a plant may, in a labor dispute with the plant management, picket the entire plant and all its departments, the building trades union, when engaged in a lawful labor dispute at a construction site, should enjoy the equal right to picket the entire site. This is prevented, however, by the *Denver Building Trades* case, which treats all contractors as strangers to each other.

H.R. 100 and my bill, H.R. 3092, would reverse the *Denver Building Trades* ruling and would remove inequitable restrictions on activities of the building trades unions at construction sites. It would restore to the building trades the right of peaceful picketing on the site of construction jobs—a right enjoyed by factory employees in a labor dispute.

Mr. Chairman, and members of the subcommittee, I ask the committee's approval of this proposed amendment to the National Labor Relations Act. I believe the passage of this legislation is necessary to preserve wage standards in the building and construction industry, for the protection of fair employers from the unfair competitive disadvantages of substandard employers, and in the interest of justice.

Mr. THOMPSON. Thank you. I am sure that you have made a fine contribution to the deliberation of this committee.

At this time we will call upon the Honorable Mario Biaggi, Representative of the 24th District of New York.

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BIAGGI. I appreciate this opportunity to submit testimony in support of H.R. 100 and the many other bills which would correct this long-continued injustice to the building trades unions. I have already joined with many other Members of the Congress in demonstrating this support by introducing H.R. 7863.

Every administration since that of President Truman has supported correcting the misapplication of the clear intent of the Taft-Hartley law of which the Supreme Court was guilty in 1951 when it handed down the *Denver Building Trades Council* decision. It is easy to demonstrate that this is not a partisan issue. In 1954, President Eisenhower recommended:

... that the act be clarified by making it explicit that concerted action against ... an employer on a construction project who, together with other employers, is engaged in work on the site of the project, will not be treated as a secondary boycott.

Neither is this issue a measure to favor labor unions, although the labor movement is and has been behind its enactment. It is a measure designed to make the application of the ban on secondary boycotts under the Taft-Hartley Act apply to construction unions and building contractors in the same manner it does elsewhere.

The prohibition against the secondary boycott was designed to make certain that in a labor dispute a neutral third party was not injured. The key word is "neutral," for this is the normal situation. In most labor disputes only two parties, labor and management, are involved—all others are neutrals.

That this was the intent of the prohibition in the Taft-Hartley Act of the secondary boycott can also be easily demonstrated. In the course of the debate on the Senate floor Senator Robert A. Taft explained the prohibition as follows:

This position makes it unlawful to resort to a secondary boycott to injure the business of a third party who is wholly unconcerned in the disagreement between an employer and his employees.

This is simply not the situation in the construction industry. Contractors and the subcontractors at a construction site are not independent, neutral businessmen, save in the narrow legal view of a court which seemingly did not understand the construction business. Instead, the work of a contractor and the work of his subcontractors is interrelated—closely interrelated. Any contractor, even before bidding on a construction job, carefully considers what work to subcontract and to whom to subcontract it. He plans the cost and type of labor each subcontractor will provide and, in some cases, whether to perform the work himself or subcontract it. The construction job is one interrelated whole. It is sheer nonsense to say that a work stoppage is a strike if the contractor is doing the particular work himself, but becomes a secondary boycott if he has subcontracted the job.

This situs picketing problem is neither a new nor a disputed issue before the Congress. It has been before every congress since 1951. It has been repeatedly considered and reported upon. There is no need

for lengthy consideration nor further delay in this Congress. Let us make certain that this measure is brought before the Representatives of the people and voted up or down in this Congress. It should not take 20 years for Congress to correct a mistake.

Mr. THOMPSON. Congressman Biaggi, it has been a pleasure to hear your testimony.

Our next witness will be Congressman Joseph E. Karth. Mr. Karth represents to the Fourth Congressional District of Minnesota.

**STATEMENT OF HON. JOSEPH E. KARTH, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MINNESOTA**

Mr. KARTH. I have introduced H.R. 5820 to associate myself with the position of Chairman Thompson and other Congressmen who, along with each of our recent Presidents, have sought to correct that misinterpretation of the Taft-Hartley law which has imposed upon construction workers an unintended and unfair burden in their bargaining relationships with their employers.

It is especially unfortunate that the National Labor Relations' *Denver Building Trades* rule has been permitted to deprive building tradesmen for two decades of their right to protest at a common construction site the substandard conditions maintained by any one of the construction contractors.

The restriction of this rule was not contemplated when the Taft-Hartley Act was enacted, yet it has too long persisted.

There is no need on my part to review the long history of attempts to remedy the inequity in respect to onsite picketing because the legislative record is already heavily weighted with testimony in favor of restoring this basic right. I think it is time now for Congress to redress a serious wrong by enacting this legislation.

Mr. THOMPSON. Thank you, Congressman Karth for appearing before this subcommittee.

We will now hear the statement of our colleague, the Honorable Joshua Eilberg of the State of Pennsylvania.

**STATEMENT OF HON. JOSHUA EILBERG, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. EILBERG. Mr. Chairman, I appreciate this opportunity to testify in support of H.R. 100 and my bill, H.R. 1084, which would relieve building tradesmen in this country of the unjust restriction which has been placed on their right to peacefully picket at their employment site. Since coming to Congress I have supported and sponsored legislation similar to that now pending before this committee, and I commend you for taking this important matter up early in this session.

The right to peacefully picket at an employment site is accorded to other workers in this country but is denied to workers in the construction industry because of the decision of the National Labor Relations Board in the *Denver Building Trades* case in 1949. It seems to me that those of our citizens who happen to make their living in one or more of the building trades have been placed at a great disadvantage by that decision.

The *Denver Building Trades* decision fails to recognize the realities of work in the construction industry. It was a decision based on a technicality in the law. The NLRB took the view that contractors and subcontractors on any construction site are separate employers and, therefore, picketing at the construction site is in the nature of a secondary boycott prohibited by the Taft-Hartley Act.

Cursory examination of the interrelationship between the contractor and his subcontractor, or between two or more general contractors at the same construction site, shows that their operations are closely interrelated. Any contractor, before he bids on a construction job, must carefully analyze his material and labor costs and those of his subcontractors or fellow general contractors. It seems clear to me that such contractors are part of a joint venture and are not separate in any real sense.

The intent of the Taft-Hartley Act is to ban secondary boycotts which affect neutral employers. In defense of the prohibition on secondary boycotts, Senator Robert A. Taft stated:

This portion makes it unlawful to resort to a secondary boycott to injure the business of a third person who is solely unconcerned in the disagreement between an employer and his employees.

I do not believe that contractors at a construction site can be considered as neutral or "unconcerned" parties. However, the opposition to this legislation repeatedly states that contractors are in such a category and that this statement by Senator Taft is evidence of his view that picketing at a construction site would be considered a secondary boycott. When I hear this claim I can only conclude that the critics are taking the Senator's remarks out of context. I have carefully studied the above remarks and others by Senator Taft on this matter, and it appears clear to me that Senator Taft did not intend the prohibition against secondary boycotts to apply to the building trades. Since this matter has already been explored in some detail in previous testimony, I will not take the committee's time by quoting at length from Senator Taft's remarks on this subject.

It is important to note that every President of the United States who has been in office since the *Denver Building Trades* decision has recognized that the legitimate concerted activities of construction workers have been unjustly prohibited. President Truman, Eisenhower, Kennedy, and Johnson each made specific recommendations for legislation which have been implemented in H.R. 100 and in my bill, H.R. 1084. The Nixon administration has also recognized the need for corrective legislation and has endorsed the principle of onsite picketing.

During earlier hearings before this committee, critics of the legislation have quoted figures alleging the high—extraordinarily high—hourly salaries which are being secured by building tradesmen in this country. We hear figures quoted from \$5 to \$9 per hour. What these same people fail to mention is that in many of these cases the high figures they are quoting are pay per hour demands not actually what the men receive after negotiations; and, of course, these same people never mention the lower salaries that are paid many thousands of other building tradesmen. The high figures they quote are not the general rule.

I noted with interest the recent testimony of the Building and Construction Trades Department, AFL-CIO, before this committee, in which hourly wage determination figures in the \$1.60 to \$2.50 category were quoted. Those figures seem to me to be an adequate response to the critics' assertions that wage rates in the construction industry are high enough and that this legislation is not needed.

The critics also fail to mention that construction work is seasonal and that there is a real and disturbing disparity between hourly wages and annual earnings for workers in the construction industry. The Congress and the Department of Labor have been concerned about this seasonality problem for some time, and I hope some answer can soon be found. No matter how much a man earns per hour, if he is only employed a few months out of the year, he isn't going to make a wage commensurate with those workers who have year-round employment but who may make a slightly less amount per hour. We must look to annual wages, and not necessarily at wages per hour alone, as our guide in this area.

The opposition to this legislation also asserts that building tradesmen still have the right to peacefully picket at their employment site under the *Moore Dry Dock* case if the conditions set down for such picketing are followed. They again fail to mention that many times the conditions for picketing under the *Moore Dry Dock* rule may not be present; even if the conditions are present, all the construction contractor has to do is then set up a "reserved gate" for the picketing employees, thereby rendering the picketing ineffective in most cases. This is "a luxury not afforded employers in the manufacturing industry." (54 Geo. L.J. 962, at 976.) Other devices are also employed to get around legal picketing by the construction workers, and in some cases the devices employed even make formerly legal picketing unlawful.

What my bill and H.R. 100 would do is nothing more than restore to building tradesmen the rights they enjoyed prior to the *Denver Building Trades* case. I challenge the opposition to this legislation to show us that building tradesmen now have picketing rights equal to those of other workers in this country—it is clear to me they don't have such rights.

The inability of building tradesmen to picket at their construction site adversely affects their collective bargaining position with their employer, whereas workers in other industries are in a much better bargaining position because they can picket more effectively in an effort to secure their legitimate demands.

I wholeheartedly support this committee's efforts to remove the technicality in the present law, and I hope the committee will report this legislation soon so that it can be considered on the House floor. I will do everything I can to support the passage of H.R. 100.

Mr. THOMPSON. Thank you. I am sure that you have made a fine contribution to the deliberation of this committee.

Our next witness this morning is Mr. Robert Thompson, representing the Chamber of Commerce of the United States.

Welcome, Mr. Thompson. I am sorry that we got to you so late but I am sure you recognize the importance to the Chair and to the members of having a rather full discussion with the Secretary.

STATEMENT OF ROBERT T. THOMPSON, CHAMBER OF COMMERCE
OF THE UNITED STATES

Witness THOMPSON. Yes, sir, I found it very enlightening.

Mr. THOMPSON. You have a prepared statement. You may proceed with it as you wish.

Witness THOMPSON. It is a pleasure, Mr. Chairman and members of the committee to appear before you again on this issue of common situs picketing which has been discussed for so many years.

My name is Robert T. Thompson. I am an attorney with the firm of Thompson, Ogletree & Haynsworth, of Atlanta, Ga., and Greenville, S.C., and a member of the national chamber's labor relations committee. In my practice, I represent a number of construction companies and I am labor counsel for the Associated General Contractors, Carolinas Branch, which has over 2,000 members, which incidentally is the largest among the AGC.

I am appearing before this committee on behalf of the Chamber of Commerce of the United States of America. The national chamber is the largest association of business and professional organizations in the United States, and is the principal spokesman for the American business community.

The national chamber represents 3,800 trade associations and local chambers of commerce. It has a direct membership of over 34,000 business firms and an underlying membership of approximately 5 million individuals and firms. On behalf of the national chamber, I wish to thank the committee for this opportunity to present its views on H.R. 100, a bill to amend the secondary boycott provision, section 8(b) (4), of the National Labor Relations Act.

I am accompanied today by Mr. Anthony J. Obadal, labor relations manager, and Mr. William R. Walter, labor relations attorney, both of the national chamber staff.

In a secondary boycott, a union having a labor dispute with one employer, called the "primary" employer, brings pressure to bear on an innocent third party known as the "secondary" employer. Its aim is to compel the secondary employer to stop doing business with the primary employer, in the hope that this will induce the latter to give in to union demands.

Under our present law, embodied in section 8(b) (4) of the National Labor Relations Act as amended, all secondary boycotts for the specified illegal purposes, without distinction as to the union involved or the locations of the primary or secondary employers, are illegal.

But H.R. 100 would change this to the singular advantage of the building trades unions. Simply stated, H.R. 100 would exempt these unions from the secondary boycott ban whenever they are engaged in a labor dispute at a construction site. Translated in terms of potential effect, H.R. 100 would thus give the building trades unions a license to completely close down any construction project in this country.

An example will serve to illustrate how this would be possible. Suppose that a group of unionized sheet metal workers, just a fragment of the total work force employed at a construction project, gets into a labor dispute with their subcontractor employer.

Under H.R. 100, these sheet metal workers would be allowed to picket not just their own employer but the entire construction site. This would start a chain reaction of work stoppages by the thousands of other employees at the project and, eventually, all work on the project would be brought to a standstill.

To avert this, of course, the general contractor would have to replace the sheet metal workers' employer with a subcontractor who had no dispute with the union. And to avoid being replaced, the sheet metal workers' employer would be forced to accede to the union's demands. Regardless of the outcome of this union squeeze play, many innocent persons not involved in the original dispute would be hurt, and a great deal of money would be lost.

SECONDARY BOYCOTTS DETRACT FROM NATIONAL LABOR POLICY

H.R. 100, then, is drastic legislation. Drastic not only because it would extend unjustifiable and unnecessary power to the building trades unions, but also because it represents a radical departure from the philosophy of our long-established national labor policy.

One of the express purposes of the National Labor Relations Act, for example, is to promote industrial stability by eliminating the causes of industrial strife. By their very nature, however, secondary boycotts detract from this purpose. For as they reach out to ensnare neutral employers and employees they cast into jeopardy that many more businesses and jobs. An alien force, they undermine existing employment relationships, and are clearly designed to jeopardize if not eliminate employee free choice in representation questions.

Moreover, when in 1947 Congress specifically outlawed the type of secondary boycott activity that H.R. 100 would now allow, it acted out of a firm conviction that secondary boycotts, by any unions, are against the public interest. That conviction was born from concern over the obvious evil of such boycotts, injury to wholly innocent parties. That evil is as real today as it was then, and should in and of itself be reason enough for rejection of H.R. 100.

TRADES UNIONS ALREADY HAVE ADEQUATE PICKETING RIGHTS

In addition, there is no need for this special interest legislation, since the trades unions operate at no disadvantage under the present law.

It is true, of course, that the U.S. Supreme Court ruled that contractors and subcontractors working on a construction project are independent employers, and that trade unions having a dispute with one must conduct their picketing so as to avoid enmeshing the innocent others, *N.L.R.B. v. Denver Building and Construction Trade Council*, 341, U.S. 675.

But that ruling did not put the construction unions in a lesser position than other unions with respect to picketing power. For the National Labor Relations Board and the courts have carefully formulated exact safeguards which permit lawful primary picketing at any common work situs and at the same time protect innocent third parties from being affected by such picketing.

These safeguards, which were established in the *Moore Dry Dock* case, *Sailors Union of the Pacific*, 92 NLRB 547, and which apply to all unions, are:

1. The picket signs must clearly indicate the employer with whom the dispute exists;
2. Picketing at the job site may be carried on only when the primary employer or his employees are engaged in their normal business at the situs;
3. The picketing must be limited to times when the situs or physical site of the dispute is located on the secondary employer's premises; and
4. The picketing must be limited to places reasonably close to the situs.

These restrictions, it must be emphasized, apply to all unions engaged in a dispute at a common work situs. And they are a just attempt to balance what the U.S. Supreme Court has called the "dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on an offending employer in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." (*Denver Building Trades* case, *supra*.)

So there are reasonable criteria already existing to balance the picketing rights of all unions with those of neutral parties. And it would be unconscionable to destroy this balance by giving the trades unions carte blanche over construction site picketing through H.R. 100.

THE "JOINT VENTURERS" FICTION

Because there is no legitimate reason for the blank check envisioned by H.R. 100, the building trades unions have resorted to several fictions to justify its passage. The foremost of these fictions is that all employers at a construction site are "joint venturers," and that none of them can consequently be considered neutral to a union dispute with any of them.

This argument is legally and realistically unsound. The Supreme Court itself rejected it in the *Denver Building Trades* case, pointing out that the fact that a contractor and subcontractor were engaged in work on the same construction project "did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other."

Moreover, as anyone even remotely familiar with the realities of construction project work knows, the general contractor and each subcontractor at a construction project are in every sense of the word separate entities. They deal with each other at arms length and on a cold, businesslike basis. The subcontractors often compete with each other in the same field, and they each independently negotiate the wages and working conditions of their own employees.

The specific problems of each subcontractor control his ability to determine wages and working conditions of his own employees. Frequently there will be numerous contractors on a job who deal directly with the owner rather than with one another. And with regard to the legal requirements of separate contracts with some contractors, there

are State laws in some States which require that on public projects certain given contracts be bid and let directly with the subcontractors rather than through a general contractor.

The situation on a construction site, in other words, bears no similarity to that of a single manufacturer who employs employees from different trades. Whereas the manufacturer control the wages and working conditions of all his employees, contractors and subcontractors on a construction site have nothing to do with the terms of employment of the other employees. The only way they can affect each other's terms of employment is by ceasing to do business on the same site as the struck employer, thereby forcing the struck employer to immediately capitulate to union demands or be replaced by another contractor.

Perhaps the best way to expose the trade unions "joint venturer" argument is to carry it to its logical conclusion. In essence, the argument would justify secondary boycotts against any employer who, like a subcontractor, contributes to the creation of a single product.

For example, the mining company which produces iron ore, the steel company which processes it into steel, and the automobile company which makes it into cars all work on the same material in successive stages, just as contractors do on construction sites. Under the trades unions' argument, all of these employers should be deemed "joint venturers," and picketing should be permitted against all of them when only one is involved in a labor dispute.

It is patent, of course, that these employers are not joint venturers, and that picketing in a dispute with one cannot be visited upon the others. It should be equally patent to those who care to look beyond the fact of their physical proximity on a construction project that the prime contractor and the subcontractors likewise are not joint venturers, and likewise should not be embroiled in each other's disputes. It would be highly unrealistic to conclude otherwise.

H.R. 100 WOULD TILT THE SCALES, NOT BALANCE THEM

Another fiction advanced by the proponents of H.R. 100 is the claim that building trades unions do not now enjoy the same rights as other unions with respect to the right to strike and picket. If unions in the construction industry have been denied the right to engage in primary picketing in labor disputes, there might be some merit to this claim.

But, as we have already shown, this is not the case. Construction unions have always had the same right to engage in primary strike activity as other unions. The proviso to section 8(b) (4) (B) in fact, specifically states that "nothing contained in this clause (B) shall be construed to make unlawful where not otherwise unlawful any primary strike or primary picketing."

So what the building trades unions would get through H.R. 100 is more power than other unions now possess.

They would get, for example, the power to bring picketing pressure to bear on an entire group of construction site employers whenever the employees of one choose either to be nonunion or to affiliate with a non-AFL-CIO union. This power would effectively enable them to eliminate from the construction scene all employers but those using AFL-CIO labor.

By the same token, it would destroy the right of the workers to make a free choice over whether or not to join a union and, having made the choice, to be free to work without penalty for it.

And, as an AFL-CIO trades union official himself admitted during prior-year hearings on this same legislation, it would give them the power to "destroy independent unions." (C. J. Haggerty, president, Building Construction Trades Department, AFL-CIO, in hearings before the Special Subcommittee on Labor, House Committee on Education and Labor, 90th Cong., first sess., 1967, p. 86.)

TRADES UNIONS' WAGE GAINS ARE PROOF OF POWER

The building trades unions simply do not need these additional powers to enhance their status. The successes of these unions in securing wage increases should be proof enough that they are at present in no way disadvantaged.

In Mobile, Ala., the pipefitters got a 31.5 percent increase in 1968. The steamfitters in St. Louis, Mo., won a contract that, at completion, will be paying them \$10.45 an hour, including fringes, or \$418 for a 40-hour week, or \$20,900 for 50 such weeks a year. In Dayton, Ohio, carpenters will be grossing \$17,600 per year by 1971. And Detroit, Mich., has seen construction settlements in the 30 to 35 percent range per year.

Mr. THOMPSON. If I may interrupt you at this point, may I ask you to provide some information to the subcommittee with respect to the prevailing Davis-Bacon wage scales in the Carolinas in representative trades such as laborers, carpenters, bricklayers, and so on. Could you provide the committee with that information?

Witness THOMPSON. We will be happy to have that information.

Mr. THOMPSON. The prevailing Davis-Bacon wage scales.

Witness THOMPSON. Not confined just to the categories mentioned by the chairman?

Mr. THOMPSON. Yes, sir.

Witness THOMPSON. We would be glad to do so.

(The information to be furnished follows:)

WASHINGTON, D.C.,
May 26, 1969.

HON. FRANK THOMPSON, JR.,
*Chairman, Special Subcommittee on Labor, Committee on Education and Labor,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. THOMPSON: The National Chamber is pleased to furnish herewith information requested by your Committee during our earlier testimony on H.R. 100—Common Situs Picketing. We sincerely hope this information can be incorporated into the public record of the hearings.

WAGE RATES

The Committee asked for information as to the wage rates set by the Department of Labor, under the Davis-Bacon Act for construction workers in the Carolinas. In response to that request, we are enclosing copies of recent Davis-Bacon wage determinations made by the Department of Labor for workers on construction projects in North and South Carolina.

The Committee also asked for a comparison of the average weekly wages of construction and manufacturing workers in the Carolinas. Regrettably, such a comparison is not available to us at this time. In any event, we would question the value of a comparison that isolates two rural states. The point made in our prior testimony was that wages of construction workers are much higher

than those of manufacturing workers on a *national* basis. This point is documented by the earnings data in the Department of Labor's latest report, *Employment and Earnings and Monthly Report on the Labor Force—May 1969*. Copies of the pertinent data from that report are enclosed for the Committee's information.

General Accounting Office Reports:

In response to a request, we advised the Committee during our testimony that we would furnish, or ask the General Accounting Office to furnish, the six GAO reports regarding the inadequate administration of the Davis-Bacon Act by the Department of Labor.

We are informed that these six reports, entitled—

Review of Wage Rate Determinations for Construction of Capehart Housing at the Marine Corps Schools, Quantico, Virginia—June 1962;

Wage Rates for Federally Financed Building Construction Improperly Determined in Excess of the Prevailing Rates for Similar Work in the New England Areas—January 1965;

Review of Determinations of Wage Rates for Construction of Carters Dam, Georgia—December 1966;

Wage Rates for Federally Financed Housing Construction Improperly Determined in Excess of the Prevailing Rates for Similar Work in the Dallas-Fort Worth, Texas, area—March 1965;

Wage Rates for Federally Financed Housing Construction Improperly Determined in Excess of the Prevailing Rates for Similar Work in South-eastern Areas of the United States—August 1964; and

Need for More Realistic Minimum Wage Rate Determinations for Certain Federally Financed Housing in Washington Metropolitan Area—September 13, 1968,

have previously been transmitted to the Congress by the Comptroller General of the United States. Therefore, they should be readily available for inspection by members of the Committee.

The unanimous theme of these six GAO reports is that the wage rates set by the Department of Labor were higher than, and did not fairly represent, wages prevailing in the locality.

The reports are extensive, so there is little need to further document that finding here. Instead, we would merely suggest it is highly likely that this artificial inflation of wage scales has been repeated on construction projects across the country, since the Department of Labor uses the same methods to determine "prevailing" wages everywhere.

POSITION OF THE LATE SENATOR TAFT

Finally, the suggestion was made by a member of the Committee that the late Senator Taft—whose abhorrence of secondary boycotts was well known—had by 1953 decided to support common situs picketing legislation.

This suggestion has as its sole basis an exchange that occurred between Senator Taft and Mr. Richard J. Gray, then President of the AFL-CIO Building and Construction Trades Department, in 1953 hearings on legislation similar to H.R. 100.

The colloquy between Senator Taft and Mr. Gray was as follows:

"Senator TAFT. Mr. Gray, the thing that interests me most in this building trades business is that under the Wagner Act my recollection is that the Board did not apply the act to the building trades in general. I do not know. Was there any application of it to the building trades?"

"Mr. GRAY. I do not know of any instance where the Board took jurisdiction over the building and construction trades industry under the Wagner Act.

"Senator TAFT. Relying on that history, and the fact that we did not in any way change the definition of interstate commerce when we amended the Wagner Act to be the Taft-Hartley law, I certainly was under the impression that during the consideration in 1947 that we were not dealing fundamentally with building trades. There might have been a few practices covered in the new act, but certainly we had no intention to change the concept of jurisdiction of the building trades." (Hearings Before the Senate Committee on Labor and Public Welfare, 83d Cong., 1st Sess. 1668, 1953).

We respectfully suggest that these remarks by Senator Taft do not support the suggestion that the Senator had decided to endorse common situs picketing.

Senator Taft plainly said that, based upon Mr. Gray's representations, he did

not think the Taft-Hartley amendments alone were intended to expand the Wagner Act provisions to the construction industry. Rather, Taft asserted that NLRB jurisdiction over that industry was limited to "a few practices covered in the new act"—that is, the secondary boycott prohibitions.

The fallaciousness of the current suggestion was exposed as early as 1960 by Senator Goldwater. Refuting an identical suggestion in hearings then being held on legislation similar to H.R. 100, he said:

"At the previous hearing of this subcommittee on Friday, the chairman asserted that the late Senator Taft favored the type of proposal we are now considering. . .

"Mr. Chairman, any implication that Senator Taft favored any common situs picketing proposal or any immunity to engage in secondary boycotts on the part of the building trades unions is completely erroneous. Not only does the record fail to show that Senator Taft held any such views but it indicates the exact contrary. It was the late Senator from Ohio who declared that no one had ever been able to show him a single example of a 'good secondary boycott.' It was he who led the fight for outlawing secondary boycotts in 1947 which resulted in their being prohibited under the new law, the Taft-Hartley Act. The legislative history clearly shows that it was precisely the building trades unions who were among the principal objects in the minds of Congress when it banned secondary boycotts. Certainly the NLRB so construed the legislative history. Prior to Taft-Hartley under the Wagner Act the NLRB refused to assert jurisdiction in the construction industry but when Taft-Hartley was enacted the NLRB changed its position and began to assert jurisdiction in that industry.

"Why? Because the new law specifically so provided? Not at all. It contained no such provision. The NLRB merely concluded that the inclusion in the Taft-Hartley Act of provisions outlawing secondary boycotts and jurisdictional strikes and the legislative history of those provisions made it perfectly clear that Congress intended the NLRB to assert jurisdiction over the building construction industry because it was the unions in that industry who were among those which most frequently resorted to the use of the secondary boycott and the jurisdictional strike. From the passage of Taft-Hartley in 1947 until his tragic and unfortunate death in mid-1953, Senator Taft offered a number of proposals to amend Taft-Hartley. They never included any proposal along the lines we are considering here.

"The Senator from Ohio was aware of some of the problems peculiar to the construction industry and its unions. He was particularly aware of the difficulty of holding NLRB elections among the building trade unions. So he did, during that period, support proposals permitting them to enter into prehire 7-day union shop contracts but that is as far as he went and that proposal was included in the Landrum-Griffin Act we enacted last year. I merely wish to keep the record straight and defend the name of the late Senator from Ohio—who cannot be here to defend himself—which is unceasingly being invoked in support of programs he never advocated by those who bitterly opposed him when he was alive." (Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong., 2nd Sess. 49, 1960).

Similarly, it is also time to put to rest the idea that President Eisenhower was a staunch advocate of situs picketing.

As Senator Dirksen pointed out in 1960:

"... There is constant allusion to the fact that the President has consistently recommended this kind of a bill but strangely enough there is no allusion to it whatsoever in the State of the Union message of January 1960, after the Labor Management Disclosure Act became law and when it was common knowledge everywhere, I think, in the Labor Department, in both branches of the Congress and on the part of the President's advisers that this matter had not been disposed of but notwithstanding that there was no inclusion in the 1960 message of it." (Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong., 2nd Sess. 21, 1960).

Respectfully submitted.

ANTHONY J. OBADAL,
Labor Relations Manager.

(Information referred to in this letter is available for examination in the subcommittee files.)

Witness THOMPSON. These are revealing illustrative examples. And they cannot be classified as the exception rather than the rule.

Nationally, for example, the median wage increase in construction in the first 9 months of 1968 stood at almost three times that of all industry. And the Department of Labor reports that the average weekly wage in contract construction in January 1969, was \$164.53 for a 36.4-hour average workweek. This contrasts with an average of \$126.36 weekly in manufacturing for a 40.5-hour workweek. At the same time, the average hourly wage in contract construction of \$4.52 was almost 50 percent higher than the hourly wage of \$3.12 in manufacturing.

The alarming proportions of this gap between hourly wage rates in the construction and manufacturing industries is highlighted by what may be in store for this year.

Effective in December, for example, hourly wage rates for construction workers in seven major Ohio cities are pegged to range from \$5.18 to \$7.56. Even if the manufacturing employees in these cities enjoy a 5-percent raise in their hourly rate this year, they will still average but \$3.70 an hour and would thus trail by a wide margin even the lowest paid of the construction workers. And it seems a safe bet that this construction wage pattern will also be reflected elsewhere.

Mr. THOMPSON. Could you supply also the same comparison for the Carolinas—the average wage and weekly wage in the construction industry as compared with the wage in other industries?

Witness THOMPSON. We will provide those if they are available to us. I am not sure if they are but if they are, we will supply them. I think the Department of Labor maintains those statistics and we will furnish them.

Mr. OBADAL. You might also look at some of the statistics and reports of the General Accounting Office and the inadequacies of the administration by the Department of Labor and we will ask the General Accounting Office to furnish you the reports of the General Accounting Office which date back from 1960 concerning the inadequate administration of this law, and we hope you will include these in the record when you take this matter into consideration.

We are touching on a very important issue here—have these prevailing wage laws been fairly administered? And we will give you the six reports or ask the General Accounting Office to give you the six reports in which they conclude that they have not been fairly administered.

Mr. THOMPSON. If the Davis-Bacon Act is not adequate, in your opinion, you might also supply us with copies of the contract wages for the area to which you refer.

Mr. OBADAL. The reports of the General Accounting Office take those into account and refer to them.

Witness THOMPSON. For it only mirrors a gap that has been widening for many years, a gap brought about largely because of the powers of the building trades unions. The impact of vesting even more power in the building trades unions upon an already overinflated economy could be devastating. The certain inflationary effect of H.R. 100 is ample reason for its rejection, totally aside from other considerations.

If I might quote from the statements which were made by officials of the previous administration, this is Mr. William H. Chotiner, Assistant Secretary of Commerce who made this statement last year.

Wage demands being advanced by construction unions in widely scattered parts of the country constitute one of the most serious challenges to our efforts to slow down the advance of inflation in the American economy.

Quoting also from the President's Cabinet Committee on Wage and Price Stability dated in 1968:

Wage price developments in the important construction segments spread inflation throughout the economy by raising costs elsewhere and by intensifying wage demands in other industries.

SEASONALITY OF CONSTRUCTION NOT THE ANSWER

The trade unions, of course, attempt to defend such wage settlements on the ground of the seasonality of construction activity. But it is significant that many of the construction workers who have won these fantastic wage increases perform essentially "indoor" work, as it were, and do not generally have their work hampered by the weather. Plumbers, electricians, and sheet metal workers, for example, generally have a roof over their head so that they are rarely put out of work by the elements. Yet they are right at the top of the wage scales.

Moreover, there is mounting evidence that year-round employment of union members is the rule rather than the exception in construction. Studies have shown, for instance, that in 1967 the average number of workers in construction ranged from a low of 2,863,000 to a high of only 3,341,000. This suggests that there is a hard core nucleus of union workers in construction.

And in many areas of our country, commercial building, where most union members are employed, continues around the calendar. Indeed the president of the Chicago Building Trades Council has admitted that most of the union members in this area, and what could be a more representative one, work 2,000 hours a year or more.

Under these circumstances, the seasonal aspects of construction offer little as an explanation for the wage gains that the trades unions have recorded.

Mr. THOMPSON. They work harder than we lawyers. I wonder what the increase in law fees in the Carolinas in the last 10 years has been?

Witness THOMPSON. I do not have any figures, Mr. Chairman, but I am sure they are not enough.

Mr. THOMPSON. I know that is the case in New Jersey and I am glad to hear you say that.

Witness THOMPSON. To put it bluntly, then, the building trades unions are not suffering under our present law. For if that law really hamstrung them, the wage gains we have noted would not be a reality. Wage gains such as these could not be achieved by a union operating at a handicap. Quite the contrary, such wage gains can only be attributed to tremendous power, which the building trades union obviously enjoy.

It would truly be a catastrophe for the construction industry, then, indeed for the Nation, if the secondary boycott power were to be added to the already formidable arsenal of power at the command of these unions.

H.R. 100 WOULD HAMPER TECHNOLOGICAL ADVANCES

Nor would it be a disaster only with respect to the issue of skyrocketing wages. What might well be worse, the secondary boycott power would seriously hamper technological advances.

The trades unions already have the power to boycott the use of prefabricated products whenever their use deprives the union members of work traditionally performed by them. The U.S. Supreme Court gave them that power in *National Woodwork Manufacturers Association v. N.L.R.B.*, 386 U.S. 612. This ruling regrettably opened new loopholes of immunity for trades unions bent on a nearsighted policy of limiting the available work force while maximizing the amount of available work.

Thus, in Cleveland, the building trades unions struck homebuilders in that city for an agreement not to use prefabricated roof trusses, cabinets, and similar prefabricated materials.

The San Diego Building Trades Council opposed use of concrete forms which were prefabricated off the job site. The council insisted such forms should be constructed by the union at the site.

The AFL-CIO plumbers refused to install prefabricated heating equipment on a Ford Motor construction project in St. Thomas, Ontario, unless all piping in the units was dismantled and reassembled by the plumbers on the job.

In Houston, the local Heat and Frost Insulators and Asbestos Workers Union declined to install precut insulation and struck in protest. Charges that the strike constituted a secondary boycott were dismissed by the National Labor Relations Board. Its decision was later upheld by the Supreme Court.

But as detrimental as this product boycott loophole is, it is at least presently limited to primary activity. Because H.R. 100 would permit secondary activity, however, this loophole would be expanded to put into the hands of the trades unions the power to decide the technological future of the industry. For what contractor could take the risk of testing a product boycott where the immediate result would be a shut-down of the whole project? That he might eventually prevail in court would certainly have to be considered a Pyrrhic victory, in view of the losses inflicted upon both himself and other contractors by the closure of the project.

Since no contractor could chance that, of course, it is clear that he would have no choice but to refrain from adopting any innovative products or procedures, unless the union gave him the green light. The building trades union would then literally control the technological future of the construction industry.

JURISDICTIONAL DISPUTES

H.R. 100 would also have grave consequences on the industry with respect to jurisdictional disputes. In the *C.B.S. case (N.L.R.B. v. Radio and Television Broadcast Engineers Union, 364 U.S. 573)*, the Supreme Court ruled that any union, including unions that represent no employees of the employer involved, may call a strike and picket to protest an employer's assignment of work.

This ruling virtually destroyed the intent of the authors of the Taft-Hartley Act to prohibit any strike over a work assignment unless the

assignment was in disregard of an NLRB certification or order recognizing a union as bargaining representative of the employees performing the work.

Thus, of 274 work stoppages occurring on powerplant construction projects during a period surveyed at random last year, 133, almost half, involved jurisdictional disputes. What is clearly needed to reverse this alarming trend is legislation to restore the original intent of the authors of the Taft-Hartley Act. Which is most certainly not needed is legislation like H.R. 100, which would only aggravate the problem. For it would subject construction employers to the mercy of the trades unions over work assignments, under threat of total closure of a project.

CONCLUSION

The construction industry represents more than 10 percent of the gross national product of our country. It is, in fact, the largest single part of GNP. And forecasts are that by the year 2000, construction needs will more than double all of the construction that is in place today. This is the time then to try to guarantee that there will be stability in labor relations on construction sites. Yet H.R. 100 would insure just the opposite result, by permitting the proliferation of labor disputes to innocent contractors and their employees.

And to what good purpose? According to the building trades unions, for the purpose of balancing their picketing rights with those of industrial unions. Yet we have seen that the alleged imbalance to which the trades unions refer is wholly imaginary and the result of a misconception of the employment situations in manufacturing and construction. And the trades unions should be the first to realize this, if indeed they do not, in view of their tireless efforts to maintain the multiemployer, craft concepts in the construction industry for bargaining purposes.

So there really is no good purpose behind H.R. 100. And even if there were, it should be apparent that it would never be so worthwhile as to offset the host of evil consequences of that legislation. Consequences such as:

The closure of mammoth construction projects over a dispute with one small subcontractor, a result that would be detrimental not only to all of the parties working on the project, but also the public interest, as in the case of ghetto housing, for example, or even our national security, as in the case of a national defense project;

The proliferation of labor disputes to innocent parties, a result that would clearly jeopardize the stability of existing employment relationships;

The destruction of employee free choice over union membership and the elimination of independent unions, a result that would not only rob employees of a basic right, but also give the AFL-CIO trades unions a monopoly over union membership in the construction field;

The curtailment, if not total blocking, of vital technological progress through enlargement of the product boycott, a result that would hamper growth of the industry and jeopardize housing for the future;

The expansion of union power so as to permit trades unions to control work assignments in jurisdictional disputes.

The certain inflationary effect of vesting even more power in the building trades unions at a time when their wage settlements and resistance to technological change are already alarming.

In 1945, in explaining why section 8(b)(4) was being broadened to outlaw all secondary boycotts, Senator Taft declared:

It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between kinds of secondary boycotts.

(93 Congressional Record 3835, 4198, Legislative History of the Labor Management Relations Act, 1945, Government Printing Office, p. 1106.)

The immeasurable harm that would result from the secondary boycott exemption proposed by H.R. 100 clearly demonstrates, we submit, that today as in 1945, there is only one kind of secondary boycott, a bad one. And to unleash this evil for the singular benefit of the building trades unions is unconscionable. For these reasons, the national chamber is opposed to H.R. 100.

I would like to make one additional statement with regard to the position taken by the Secretary of Labor here this morning and I make this statement as well on behalf of the Chamber of Commerce of the United States.

With regard to the position of the Secretary of Labor, we respectfully disagree with the basic principle that common situs picketing should be legalized even in limited form. It seems to say that the principle is embraced but since it causes so much harm, we will limit it as much as we can.

It is the position of the Chamber of Commerce of the United States that legalizing common situs picketing would be inconsistent with the basic national labor policy of reducing conflict in the labor field and restricting disputes to the employer and employees involved.

Thank you, Mr. Chairman.

Mr. THOMPSON. I gather, Mr. Thompson, that you don't like my bill very much.

Witness THOMPSON. I would say that is a fair deduction.

Mr. THOMPSON. That is your right and it is nice to see you and those accompanying you here again.

You quoted Senator Taft in 1945 and I would like to call to your attention an article on common situs picketing in 54 Georgetown Law Journal 962, 1966, in which there is a discussion of the *Denver Building Trades Council* case, with particular reference to the secondary boycott aspects of it.

You will read in that that Senator Taft indicated after the passage of the act that he had not envisioned the special problems of applying section 8(b)(4) to the construction industry.

In the 1953 hearings when the former president of the AFL-CIO Building Trades-Construction Trades Department was a witness, the following colloquy took place.

Mr. OBADAL. What was the year?

Mr. THOMPSON. 1954. (Reading:)

Senator TAFT. Mr. Gray, the thing that interests me most in this building trades business is that under the Wagner Act my recollection is that the Board

did not apply the act to the building trades in general. I did not know, was there any application of it to the building trades?

Mr. GRAY. I do not know of any instance where the Board took jurisdiction over the building and construction trades industry under the Wagner Act.

Senator TAFT. Relying on that history and the fact that we did not in any way change the definition of interstate commerce when we amended the Wagner Act to be the Taft-Hartley Law, I certainly was under the impression that during the consideration in 1947 that we were not dealing fundamentally with building trades. There may have been a few practices covered in the new act but certainly we had no intention to change the concept of jurisdiction of the building trades.

In other words, Senator Taft had changed his mind.

Mr. OBADAL. That quote does not support that conclusion.

Mr. THOMPSON. He is not talking about secondary boycotts in the building trades industry.

Witness THOMPSON. I think the Senator obviously was referring to the jurisdiction of the Board over the industry and not the application of the law as such. I think the Senator surely would have agreed once the jurisdiction was applied to the construction industry as it subsequently was by the Board, that all of the laws applied to them just as they would apply to anyone else who came within the jurisdiction of the Board.

I think Senator Taft would be quick to respond he had no intention to exclude any industry that came within the jurisdiction of the Board from all of the rules of the law and that is just exactly what the Supreme Court did in the *Denver Building* case.

Mr. THOMPSON. I don't think that was his intention, but I don't think either that anywhere it can be supported that it was Senator Taft's intention that 8(b) (4) (B) be interpreted by the courts as it was in the *Denver Building Trades* case.

Witness THOMPSON. I would disagree with the Chairman. I don't think Senator Taft ever addressed himself on that specific point that I have ever seen but I reiterate that the Senator surely would have said, as any one who participated in the passage of that legislation, that it was intended to apply to all employers and all unions that came within the jurisdiction of the act. There is nothing in the act that would indicate otherwise.

Mr. THOMPSON. I commend that law review article to your attention.

Mr. Ford.

Mr. FORD. Thank you, Mr. Chairman.

We have been over this same testimony before. This is my first opportunity, Mr. Thompson, to discuss this kind of a proposal with you. One thing I learned from reading your testimony today is who is at least partially responsible for the telegrams I have been getting in my office. You have some catch phrases in your testimony that are regularly showing up in the telegrams that come in. It confirmed a thought that at least one staff member had that some common source of provocation was responsible for the sudden deluge of telegrams that preceded these hearings.

I am trying to do some other things around here but I will get a chance to answer all of these people.

Witness THOMPSON. I am sure Mr. Ford appreciates the interest of his constituency in this regard.

Mr. FORD. Unfortunately they are not my constituents. Apparently someone should get a better congressional listing of my constituents in Michigan. However, we are changing them so that they end up in the right office.

I gather from the paragraph at the bottom of page 1 that you see the conclusion reached and the rationale of the *Denver Building Trades* case as still being relevant and desirable as principle of labor management relations at this time in the history of the National Labor Relations Act.

Witness THOMPSON. The broad principle which holds that any labor dispute should be confined as nearly as possible to the parties directly involved and that any picketing which unnecessarily goes beyond that confinement should be considered a secondary boycott; yes, sir, I embrace that principle.

Mr. FORD. Is that the limit of your endorsement of the *Denver Building Trades* case?

Witness THOMPSON. Not necessarily. I think it is the applicable portion to this examination. I don't know to what you refer. I will be glad to address myself on any other area of that case.

Mr. FORD. I thought your prepared testimony said something stronger in the way of an endorsement of the decision rendered in the *Denver Building Trades* case. I am pleased to have it qualified in the manner in which you just qualified it.

Witness THOMPSON. I think the law is very clear and I don't think the *Denver* case changed it, and that is where a union has a legal dispute, they have the right to primary picketing. I don't see anything in the law to prevent that and I don't think I would be in a position to disagree with it. I think that is the law. If I indicated disagreement otherwise, I hope that clarifies it.

Mr. FORD. As Louis Carroll said, it is curious and it must indeed be confusing to people who read these hearings to discover that you and I can agree so wholeheartedly with the principle you have just enunciated and reach exactly opposite conclusions with respect to the action to be taken by this committee as a result thereof. Maybe the excuse that we ought to fall back on is that we are both lawyers and people expect us to act in that unpredictable fashion.

I would like to go over some of the things you have brought out here. I think it represents an effort on your part to put forth succinctly your view.

On page 2 you say:

Simply stated, H.R. 100 would exempt these unions from secondary boycott ban whenever they are engaged in a labor dispute at a construction site.

What if you took the word "these" out and just read it as "unions"? Are you stating as a fact that the proposed law, H.R. 100, would make legal what would otherwise be illegal in other provisions of this law?

Witness THOMPSON. I think it would very definitely make legal what would otherwise be illegal. We know that common situs picketing is illegal under the *Denver Building Trades* decision. If you legalize it under H.R. 100, you would certainly make something legal which has been illegal.

Mr. FORD. You indicate situs picketing, in the sense of being able to effectively picket at a dispute, is not prevented because of the subsequent decision in the *Moore Dry Dock* case and you go to some pains to point out here that as a matter of fact building trades are not now effectively excluded from effective picketing at or near the situs of the labor dispute.

Witness THOMPSON. They are prevented from engaging in what we call common situs picketing which I am sure the Congress—

Mr. FORD. You are using a catch phrase when you say "situs picketing." I am trying to get at what we are really talking about here. You say that they are permitted to engage in picketing. The only distinction seems to be between whether they do it 20 feet from the door or 50 feet from the door. The picketing of one contractor on a job where several contractors are on the job is not now illegal, as I understand your testimony.

Witness THOMPSON. That is right, if I may elaborate, I am not using the term "common situs picketing," in the sense of a cliché. It has a certain literal meaning which I think is fairly common in the trade. Common situs picketing to me means picketing an entire project when the dispute is with a single employer and there is a multiemployer project. At the present time—

Mr. FORD. Maybe I don't understand what you say here about your interpretation of the subsequent *Moore Dry Dock* case. Are you not saying in your testimony that as a matter of fact it is now perfectly legal to effectively picket, even though the question involved is a question of the conduct or labor relations of one of the component unions in a multiunion job or multiemployer job?

Witness THOMPSON. What I am saying is that they may engage in primary picketing which is subsequently laid down by *Moore Dry Dock*. That is sort of the guideline for primary picketing on a construction site and I suppose any other multiemployer.

Mr. FORD. Is not the distinction that one of the employee organizations is picketing where there is more than one employer on the job? The distinction drawn has nothing to do with the principle of whether you can picket if you are the carpenters, for example, on a job where there are a number of other contractors involved with different trades. The distinction arises out of where you picket and not why you are picketing.

Witness THOMPSON. You might say where, but the "where" has a tendency to indicate the motive behind the picketing and I think that is where *Moore Dry Dock* comes into play, to show the motivation.

Mr. FORD. This gets you to the why. It is not the why that raises a question of legality of the picketing but the where.

Witness THOMPSON. No; it is the why also. The basic legality is the purpose of the picketing. Is it directed to the primary employer as the law permits or is it directed to the secondary employers to draw them into the dispute and thereby bring economic dispute upon the secondary employer as well as the primary employer.

If you confine the picketing to limitations of *Moore Dry Dock* and others, then you run the risk of drawing in the secondary employers and thereby tipping the scales which the secondary boycott laws were designed to avoid.

Under the present law a union which has a legitimate dispute with an employer can go to a site and picket and there is nothing in the law which prevents him from doing that, provided he has a legitimate purpose, but when he expands his purpose to the neutral secondary employers and employees who just happen to be working at the same location, then he has stepped across the line and he has gone into a secondary boycott and this is what the law was designed to prevent.

This is what the steamship case, the *Denver Building Trades* was designed to recognize; this is what *Moore Dry Dock* was recognized to identify and produce guidelines for.

Mr. FORD. I am afraid the advantage you have over me is one of having served as legal counsel for a number of employers apparently involved in the actual factual application of these things from one point of view or another.

Witness THOMPSON. I am afraid I am.

Mr. FORD. As a member of the committee, I am trying to rationalize the viewpoints that have been presented over the years to this committee with respect to this legislation in order to understand what we should be doing to develop a law that applies with equal force and justice to all of the parties, be they direct or indirect, in this country. That was the original purpose of the act.

Witness THOMPSON. I think the fallacy of H.R. 100 with all due respect to its authors, and I certainly recognize the strength of your convictions in this regard, but the fallacy in it is failing to recognize the difference between effective picketing limited to the disputing parties versus picketing which unduly produces economic force beyond the primary parties.

You can picket at a construction site at a separate gate under the present law and effectively stop the primary employer from operating his business there if his employees are unionized and they are on strike and if they recognize the picket just as you can at a manufacturing plant, but what you cannot do under the present law is expand that picketing to other gates where other employees of other employers come and go to work. The expansion—

Mr. FORD. Only if you are a building trades?

Witness THOMPSON. We are speaking of the building trades because you have multiemployers.

Mr. FORD. You are stating a legal principle here with respect to picketing and shutting down the job. Your testimony under the title of "Joint Venturers Fiction" on page 4, the last paragraph, sets forth a set of circumstances.

Suppose anybody, except a building trade, was involved in this. Suppose this were a Ford Motor Co. plant, and it was somebody engaged in an activity within that plant. There is no question that the act before us would have no effect on that relationship, is there?

Witness THOMPSON. I am not sure I followed you. If there is a strike against Ford Motor Co., or some of the employees of Ford Motor Co., engaged in a strike, I don't deny they would have a right to picket at the Ford Motor Co. plant.

Mr. THOMPSON. Would the gentleman yield?

Mr. FORD. Suppose an organization representing a subcontractor of Ford Motor Co., that is operating a cafeteria or the parking lot were to strike, there is no limitation on where around that establishment they can strike.

Witness THOMPSON. There is, under certain circumstances. It depends on this case which I think the Secretary of Labor referred to, the Supreme Court case, which lays out the guidelines as to whether it is a regular part of the function or some side effort or business.

Mr. THOMPSON. Let us use the Ford Motor Co. as our hypothetical example. The largest body of the workers in the plant is going to be

United Auto Workers, and incidentally, you know, this committee has no jurisdiction over what happens in Canada as you mentioned in Ontario.

Witness THOMPSON. But many times the unions are the same.

Mr. THOMPSON. The largest body is the United Auto Workers. They have millwrights, machinists, sheet metal workers, and they have a number of other union members, and they bargain with each group separately. Is that not so?

Witness THOMPSON. I am sure it is so in some instances.

Mr. THOMPSON. Let us assume there are 50 machinists in this plant employing 3,500 people and that there are five or six other unions there including in Mr. Ford's hypothesis perhaps food workers. The 50 machinists have a dispute. Under existing law they can picket every gate of that Ford plant, can they not?

Witness THOMPSON. That is correct.

Mr. THOMPSON. H.R. 100 would in an analogous situation give the carpenters the right to picket at every gate of that construction site, would it not?

Witness THOMPSON. It would, but the distinction that you must recognize and the reason for the different application in those two situations is that Ford is the employer and Ford can settle with the machinists—

Mr. THOMPSON. Ford might not be the employer of the cafeteria workers.

Mr. FORD. He is not.

Witness THOMPSON. If it is an ancillary operation under the Supreme Court case they are part of that business and they can picket and it is not a secondary effort.

Mr. FORD. Are you suggesting a distinction that says that the cafeteria worker in an industrial plant could be an ancillary occupation in conjunction with the principal business but that the carpenters on a construction site are not simply an ancillary part of the total project?

Witness THOMPSON. They are engaged in an endeavor that is not ancillary.

Mr. FORD. You could manufacture the automobile without the cafeteria workers but you can't manufacture a building without carpenters.

Witness THOMPSON. Your basic problem where you are dealing with a manufacturing operation versus construction, you don't have multi-employers on premises.

Mr. FORD. It has been a long time since you have been at a manufacturing plant. They don't wash their own floors, they don't have their own plant guards, they don't even have the parking lots in many instances under direct control. They are all subcontracted.

Witness THOMPSON. Those are functions that were a part at one time, the operation of that manufacturer and I think that is the distinction the Supreme Court drew but you can't get away from the proposition that you have multiemployers who do not have control over a construction site and you don't have it on a manufacturing site as such.

You put the Ford Motor Co. in the position of striking and they have to say, do we settle with the machinists or let the plant run or take the economic loss this small group can cause on us all being within our whole household?

On the construction side, the contractors have no relationship one with the other and may contract directly with the owner, put them in

the position where their labor dispute affects their business, not Ford but their business, and it is taken out of the control of the persons who can make the decision.

You have then brought to bear economic pressure that is outside the confines of the bargaining table or the dispute itself. That is the difference as I see it.

Mr. THOMPSON. Speaking of the bargaining, of the 2,000 members in your Carolinas organization, how many have union contracts?

Witness THOMPSON. I don't know exactly.

Mr. THOMPSON. Could you provide us with that information?

Witness THOMPSON. I will endeavor to do so; yes, sir.

Mr. THOMPSON. Both States are right-to-work States, are they not?

Witness THOMPSON. Yes, sir; along with some others.

Mr. THOMPSON. As I recall, there are 19 right-to-work States.

Mr. FORD. On page 5 in the last paragraph again, you describe a set of circumstances that you indicate would be affected by the passage of H.R. 100. They would, for example, get the power to bring picketing pressure to bear on an entire group of construction employers whenever the employees of one chose to either be nonunion or chose not to affiliate with a non-AFL-CIO union.

Isn't this set of circumstances a jurisdictional dispute that would be covered by other sections of the National Labor Relations Act?

Witness THOMPSON. I don't think so. Maybe I am using a catch phrase again but I think it is a clear legal concept in the law that a jurisdictional dispute is a dispute between two crafts as to who will perform certain work. It has nothing to do with whether one is union and one is nonunion. It has to do with assignment of work and I don't think that would come into play here.

I don't mean assignment of work between one company and another company, but I mean assignment between this craft and another craft.

Let me try to say it another way. In reality a dispute may have an organizational or jurisdictional motive. In practice, however, it will be phrased rather differently. The *Denver Building* case illustrates the practical problem. There the unionized skilled crafts struck to drive from the jobsite nonunion workers. Ostensibly, the strike was neither organizational nor jurisdictional. The unionized workers simply refused to work alongside nonunion employees. Now this has organizational and jurisdictional effects. Workers are forced to join craft unions out of the fear of such a strike and employers out of the same fear assign jobs only to craft-unionized subcontractors.

Mr. FORD. Maybe we have a semantic problem. Perhaps I should be more precise and say isn't this a course of activity that arises out of a jurisdictional dispute?

Witness THOMPSON. Again, it is not a course of activity that arises out of a jurisdictional dispute. It can be coercive—

Mr. FORD. Wouldn't that be an issue before the Board?

Witness THOMPSON. It could be coercive under certain circumstances but there are all sorts of ways they can picket nonunion activities. The fact they don't have a contract seems to be justification for picketing a project.

Under the present law that picketing can be confined to a separate gate used by the employees of the employer with whom they have the

dispute as mild and weak as it may be. If H.R. 100 is passed, that would permit unions to picket any project where there is a nonunion contractor on the premises.

Mr. THOMPSON. Section 8(b) (4) (D) addresses itself to this:

Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class unless such employer is failing to conform.

That is 8(b) (4) (D) which H.R. 100 would not affect.

Witness THOMPSON. As 8(b) (4) (D) is presently written, it permits picketing on the basis of area standards, that this employer does not have a contract with this union and therefore they have a right to picket.

Mr. THOMPSON. Area standards are entirely different. You are aware of that.

Witness THOMPSON. That is the answer somebody gives when somebody files a charge under that section.

Mr. THOMPSON. Before we go to the quorum call, I would like to give Mr. Hansen and Mr. Clay an opportunity to ask questions.

Mr. HANSEN. Thank you, Mr. Chairman.

I appreciate your presence here and your testimony, Mr. Thompson. I gather from your prepared statement and the supplemental statement you made at the conclusion that you would disagree with the position taken by the Secretary; that is, that there is some legislation with appropriate safeguards that should be enacted to deal with this situs picketing problem.

In other words, your position is that we should not depart from the existing law in any respect. Is that essentially correct?

Witness THOMPSON. That is correct in regard to common situs picketing. I certainly would not want to broaden it to other areas of the law because we certainly believe there should be amendments to the national labor legislation.

Our disagreement with the Secretary is, would be of principle. He seemed to embrace the principle that common situs picketing should be legalized under certain limited circumstances. We disagree with that. We think that picketing beyond the primary dispute as would be encompassed in H.R. 100 and other proposals is wrong and we do not think it should be enacted into law.

Mr. HANSEN. I gather from your testimony and your analysis of the *Moore Dry Dock* case and the criteria set forth there, wherein under certain circumstances primary picketing is lawful, that these are the only safeguards that are justified?

Witness THOMPSON. Yes, sir; that is correct. We feel under the current interpretations of the law and there have been some retirements since *Moore Dry Dock*, construction unions are permitted where they have a legitimate dispute to picket at the construction site. They are just simply not permitted to shut down the whole site. They can shut down the primary employer. When they go beyond that we think it is a secondary boycott and we think it should not be legalized for construction unions or any other unions for that matter.

Mr. HANSEN. Would it not be your conclusion then that the *Denver Building Trades* case went too far?

Witness THOMPSON. I certainly do not think that it did.

Mr. HANSEN. Thank you, Mr. Thompson and thank you, Mr. Chairman.

Mr. THOMPSON. Mr. Clay.

Mr. CLAY. You stated that building trade unions don't need any additional power to enhance their status and as proof to support your statement you pointed to, among other unions, steamfitters in St. Louis, Mo., who earn \$10.45 an hour and then you say that these revealing examples are classified as the rule rather than the exception.

Are you aware that steamfitters in any other part of Missouri, other than St. Louis, Mo., and particularly Jefferson City, Mo., make \$4.25 an hour less than what you quoted?

Witness THOMPSON. I don't know the figures you quoted, but that would be \$6 above what people in manufacturing earn.

Mr. CLAY. You say this is the rule rather than the exception and this is the point I am getting to.

Witness THOMPSON. May I correct that. What we said is—

Mr. CLAY. Do you want to eliminate the statement?

Witness THOMPSON. No; I do not. These settlements are more the rule rather than the exception. We don't say that \$10 in St. Louis is more the exception rather than Jefferson City. We are saying they are more able to attain these at the bargaining table now as the general rule and it is getting worse.

Mr. CLAY. What is the prevailing rate in your State of North Carolina?

Witness THOMPSON. It is not close to \$10, but I don't know.

Mr. CLAY. Is there any steamfitter in the country who has an hourly rate that is close to \$10.45 an hour other than St. Louis?

Witness THOMPSON. I would think so.

Mr. CLAY. Could you name it for this committee?

Witness THOMPSON. I don't have that information, but I would be glad to get it to the committee.

Mr. CLAY. Is there any construction union in the Missouri area other than steamfitters that have an hourly rate of close to \$10.45?

Witness THOMPSON. I would guess there are, but I don't have the figures with me.

Mr. CLAY. You will get them for us?

Witness THOMPSON. I will be glad to submit figures.

Mr. CLAY. You made the statement this was the rule rather than the exception.

Witness THOMPSON. I made the statement that these type settlements are the rule rather than the exception and the President's Cabinet Committee took notice of that last year.

Mr. CLAY. I would like for you to document for this committee what construction union in the Missouri area has an hourly rate close to \$10.45 other than the pipefitters of local 562, St. Louis.

Witness THOMPSON. I will be happy to do so.

Mr. CLAY. Can you do it now?

Witness THOMPSON. I don't have the figures now. I have some selected figures I will be glad to give to you if you are interested.

Mr. CLAY. In the Missouri area?

Witness THOMPSON. I don't have any other in the Missouri area. I have some in other places if you are interested.

Mr. CLAY. You are going to be selective and this would be the exception rather than the rule.

Witness THOMPSON. This would be the rule as well. The only exception is I don't have any more figures on St. Louis but there was no effort to single out St. Louis.

Mr. CLAY. I will give them to you if you would like and I am a past member of local 562 of Steamfitters and there is no construction union in the city of St. Louis or in the State or Missouri or in any surrounding States, Arkansas, Kansas, or Oklahoma that come within \$3.50 an hour of the \$10.45 per hour, so in my opinion this is the exception rather than the rule.

Witness THOMPSON. That figure may very well be the exception, but the type settlement is not the type settlement and I congratulate you on your ability to negotiate such contracts. I think they are fantastic.

Mr. CLAY. There are other considerations besides what we are getting at in H.R. 100 that makes it possible for Steamfitters Local 562 to negotiate such a contract.

No further questions.

Mr. THOMPSON. Thank you very much, Mr. Thompson.

The subcommittee will adjourn to resume these hearings on Friday, April 25 at 9:45, in this room, 2261.

(Whereupon, at 12:45 p.m. the subcommittee recessed, to reconvene on Friday, April 25, 1969, at 9:45 a.m., room 2261.)

Mr. Clark: You are going to be selective and this would be the exception rather than the rule.

Witness Thompson: This would be the rule as well. The only exception is I don't have any more names on St. Louis but there was no effort to single out St. Louis.

Mr. Clark: I will give them to you if you would like and I am a past member of local 202 of St. Louis and there is no connection with the city of St. Louis or in the state of Missouri or in any surrounding states, Arkansas, Kansas or Oklahoma that comes within 25 miles of the state, per books - so in my opinion this is the exception rather than the rule.

Witness Thompson: The figures may vary well as the exception, but the type settlement is not the type settlement and I cannot state for your ability to negotiate such contracts. I think they are fantastic.

Mr. Clark: There are other considerations besides what we are getting in H.R. 100 that make it possible for Steamfitters Local 562 to negotiate such a contract.

No further questions.

Mr. Thompson: Thank you very much, Mr. Thompson.

The subcommittee will adjourn to resume these hearings on Friday, April 23 at 9:45 in this room, 2201.

(Whereupon, at 12:45 p.m. the subcommittee recessed, to reconvene on Friday, April 23, 1960, at 8:15 a.m., room 2201.)

SITUS PICKETING

FRIDAY, APRIL 25, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to recess, in room 2261, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee), presiding.

Present: Representative Thompson.

Staff members present: Peter W. Tredick, counsel; Jeunesse M. Beaumont, clerk; Michael J. Bernstein, minority counsel for education and labor.

Mr. THOMPSON. The subcommittee will be in order.

Our first witness this morning was to be Mr. C. J. Haggerty, president, Building and Construction Trades Department, AFL-CIO. He is represented here this morning by Mr. Walter Mason, who has a brief statement to make.

Mr. Mason?

STATEMENT OF WALTER MASON, LEGISLATIVE DIRECTOR AND ASSISTANT TO THE PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO; ACCOMPANIED BY LOU SHERMAN, GENERAL COUNSEL

Mr. MASON. Thank you, Mr. Chairman.

We are grateful for this opportunity to testify in support of H.R. 100. My name is Walter Mason, and I am legislative director and assistant to the president of the Building and Construction Trades Department, AFL-CIO.

Accompanying me here today is the general counsel of our department, Lou Sherman.

Our president, Mr. Haggerty, had to make an unexpected trip to Chicago and is unable to be here today as he had previously planned. He has asked me to convey to you his deep regrets that he cannot be present.

Our general counsel, Mr. Sherman, will present to this committee our statement in support of H.R. 100 but, before turning the time over to Mr. Sherman, I would like to submit several statements from general presidents of national and international unions affiliated with the building and construction trades department to be included in the record following our testimony.

I have here: A statement from Edward F. Carlough, general president of the Sheet Metal Workers' International Association; a statement from S. Frank Raftery, general president of the Brotherhood of Painters, Decorators, and Paperhangers of America; a statement from M. A. Hutcheson, general president of the United Brotherhood of Carpenters and Joiners of America; and a statement from Peter Fosco, general president of the Laborers' International Union of North America.

With your permission, Mr. Chairman, Mr. Sherman will now present our testimony.

Thank you.

Mr. THOMPSON. Without objection, the statements which Mr. Mason has will be included in the record following the testimony of Mr. Sherman.

Mr. Sherman, you are very welcome here this morning. Please proceed as you wish.

Mr. SHERMAN. Thank you, Mr. Chairman.

I have Mr. Haggerty's statement, which I should like to read, if I may.

I make this statement in support of H.R. 100—the situs picketing bill—in behalf of the Building and Construction Trades Department, AFL-CIO, which consists of 17 national and international trade unions and 8,000 local unions which represent approximately 3 million workers in the building and construction industry.

It is the proud tradition of the American labor movement to persist in its efforts to secure legislation promoting the welfare of the wage earner notwithstanding the strength of opposition forces nor the duration of the legislative battle. The effort to reverse the decision of the Supreme Court in *Hammer v. Dagenhart* commenced in 1918. A constitutional amendment was sought but not secured. Prof. Philip Taft tells us in his book "Organized Labor in American History," at page 409 that:

The AFL never slackened in its efforts to have the amendment ratified, but it had to wait for the adoption of the Fair Labor Standards Act of 1938 to end child labor outside of agriculture.

The effort to curb the issuance of labor injunctions by Federal courts was begun by the AFL as early as 1908 as a major legislative effort—Taft, "The AF of L in the Time of Gompers," at page 297—and did not reach fruition until 1932 when the Norris-LaGuardia Act was adopted.

It is in this spirit that the building and construction trades department appears before your subcommittee today for the purpose of urging the enactment at this session of the situs picketing bill (H.R. 100). A situs picketing bill has been pending before the Congress of the United States for many years. There have been numerous hearings before committees of both bodies and interested persons and groups have had ample opportunity to state their views in the most intricate detail.

The House Committee on Education and Labor and the Senate Committee on Labor and Public Welfare have prepared and issued reports on situs picketing bills. All legislative committee reports, without exception, have favored the enactment of situs picketing legislation. Four Presidents of the United States—Truman, Eisenhower,

Kennedy, and Johnson—have urged the Congress to adopt legislation which would recognize the right of labor to engage in situs picketing.

Strangely enough, notwithstanding the strong bipartisan support for this legislation, the careful studies made by the legislative committees of both bodies, and the uniformly favorable position taken by the great men who have led our country during the last two decades, the situs picketing bill has never been submitted to either House for a floor vote. It would do little good here to detail the various complex procedural devices which have been utilized to prevent the Congress from working its will on this legislation. Suffice it to say, it would appear appropriate on the record of this legislation to start the process before this subcommittee which will bring H.R. 100 ultimately to the floor for a vote by the duly elected representatives of the people.

The building and construction trades department does not intend to duplicate the extensive testimony which it has previously given before this subcommittee on the subject of situs picketing. It may be helpful, however, to select a few items for discussion.

1. The objective of H.R. 100 is to reverse the Denver Building & Construction Trades Council rule by revising the overbroad definition of secondary boycotts in the act so as not to include situs picketing at building and construction projects.

2. President Eisenhower stated the basic justification for the legislation and defined its general content in his message of January 11, 1954, which reads as follows:

The prohibitions in the Act against secondary boycotts are designed to protect innocent third parties from being injured in labor disputes that are not their concern. The true secondary boycott is indefensible and must not be permitted. The Act must not, however, prohibit legitimate concerted activities against other than innocent parties. I recommend that the Act be clarified by making it explicit that concerted action against . . . an employer on a construction project who, together with other employers, is engaged in work on the site of the project, will not be treated as a secondary boycott.

It is important to note that President Eisenhower repeated this proposal in his message of 1956 and 1958 notwithstanding the opposition which had developed to the bill from open shop contractors and others. It is also important to note that President Eisenhower repeated his support of the situs picketing bill notwithstanding the availability of the so-called Moore Drydock doctrine which had been announced by the National Labor Relations Board in 1950.

3. The leadership of the House and Senate in 1959 made a definite legislative commitment that the situs picketing bill would be made the subject of a floor vote. I quote from the Congressional Record where then Senator John F. Kennedy stated:

We have secured a commitment from the leadership of the House and Senate that in January a bill which the Senator from California, Mr. Kuchel, and I, will introduce today, which Representative Thompson—

The Chairman of this Subcommittee—

will offer in the House on the Denver case, concerning Situs picketing, will come to the floors of the House and the Senate.

I have received the assurances of the Majority Leader Mr. Johnson, the Minority Leader, Senator Everett Dirksen of Illinois, that if the Committee on Labor and Public Welfare reports the bill they will schedule it. Likewise both the Speaker of the House, Mr. Rayburn, and Representative Halleck, have said they will use their influence to secure a rule for the consideration of the bill if the House Committee on Education and Labor reports it.

4. H.R. 100 draws its language from the provisions of section 503(a) of S. 748, 86th Congress, first session, January 28, 1959, an omnibus bill introduced by the following Senators on behalf of the Eisenhower administration—and I emphasize that was an administration bill. I don't know to what extent the individuals were supporting every provision of it. But the Senators whose names are on that bill of the Eisenhower administration are Goldwater, Dirksen, Allott, Bennett, Bridges, Bush, Butler, Case of South Dakota, Cotton, Curtis, Hickenlooper, Williams of Delaware, Capehart, Mundt, and Hruska. (II. Legislative history of the Labor-Management Reporting and Disclosure Act of 1959, pp. 143–144; 84.)

There is attached to my statement an appendix marked A which compares section 503(a) of S. 748 and H.R. 100. It will readily be seen that H.R. 100 differs from S. 748 only to the extent that H.R. 100 imposes additional limitations on the right to engage in situs picketing which would have been granted by S. 748.

Mr. THOMPSON. If I may interrupt, actually, then, H.R. 100 is the Goldwater bill with additional safeguards added, is that correct?

Mr. SHERMAN. That is entirely correct and I think, if I may say, Mr. Chairman, that that is a very serious matter because we get these charges and accusations of the wildest sort being addressed essentially to the bill of the Eisenhower administration with, as you have stated, additional safeguards. Somehow or other the testimony which comes in, the statements that are made in opposition to the bill, conveniently omit, ignore, and do not respond to the facts of the case, and by facts I mean the legislative facts of this case and the sponsorship of this bill. By omitting it i.e. sponsorship, they can't erase it from history.

5. In recent years, the effects of the Denver Building Trades rule have become even more inequitable than at the time of President Eisenhower's 1954 message and the introduction of S. 748 in 1959 by the group of Senators mentioned above. At those times, the legality of primary picketing at a common situs was determined by the criteria set forth in the Moore Drydock doctrine, announced in 1950. In more recent years, however, contractors seized upon a new device to insulate themselves from the effects of primary picketing at construction sites. The device is a "reserved gate" which is established by the general contractor at the site for the exclusive use of the contractor with whom the union has its dispute, as well as his employees, suppliers, and deliverymen. The general contractor then contends that, under Moore Drydock, unions must picket only at the reserved gate regardless of the size of the construction project, the nature of the offending contractor's work and the relationship of that work with that of any other employer on the project.

In the *Markwell & Hartz* case, 155 NLRB 319 (1965), the National Labor Relations Board divided three to two in upholding the right of contractors to use the "reserved gate" device at construction sites, even though it may not be so utilized by employers at manufacturing plants. In deciding the question, the Board majority felt itself bound by the Supreme Court's decision in the *Denver Building Trades* case. Thus, the initial error in Denver became compounded and led the Board to a result which has the practical effect of extinguishing the right of building and construction trades unions to engage in primary picketing at construction sites.

The Board decision was affirmed by a 2-to-1 vote by the U.S. Court of Appeals for the Fifth Circuit (387 F. 2d 79, cert. den. 36 L. Week 3443, May 21, 1968). It may be of interest to note that the Labor Board in its briefs before the Fifth Circuit (NLRB brief, pp. 23-30, 26) and the U.S. Supreme Court (NLRB brief in opposition at pp. 11-12) argued that the courts should not interfere in the area of the Board's regulation of construction site picketing, as that subject had been one of congressional study for a number of years and that construction unions most appropriately should direct their efforts for relief to the Congress.

Almost immediately, the legal commentators called attention to the arbitrary discrimination against unions in the construction industry resulting from the Markwell & Hartz doctrine and criticized the severe consequences of the doctrine.

I quote from the Texas Law Review:

The Board's decision in the instant case results in more rigid standards for common-situs picketing in the construction industry than for reserved-gate picketing in the manufacturing industry. The same picketing that may be lawful at a construction site where there is no reserved gate, becomes unlawful when conducted at a reserved gate. Thus any general contractor wishing to lessen the effects of construction-site picketing need only set up separate gates for use by the neutral sub-contractors. This distinction seems difficult to justify since the adverse effects of reserved-gate picketing on neutral secondary employers are the same whether experienced at a construction site or manufacturing plant; the union employees of the secondary employer are likely to honor the picket line in both instances. 44 Texas L. Rev. 794, 798.

Another quote, from the Georgetown Law Journal:

By setting aside reserved gates, contractors at a construction site will be able to render ineffective almost any union picketing—a luxury not afforded employers in the manufacturing industry. 54 Geo. L. J. 962, at 976.

Another quote, from the Southwestern Law Journal:

The Markwell & Hartz decision seems to stifle completely any union attempt to picket at a construction site. Any informed employer will know to utilize separate gates to indicate a violation of the Dry Dock rules. . . . Markwell & Hartz is the most stringent measure ever taken to control union picketing at a construction site, surpassing even Washington Coca Cola. 20 Sw. L. J. 815, 833.

If I may interject, Mr. Chairman, at this point, these quotations are from law journals. They are not from legislative representatives. They are not from the people who come here to the legislative conference every year. And yet in their careful scholarly language they are saying and backing up the statements we have made from the standpoint of the way we feel our interests have been affected.

Returning to Mr. Haggerty's statement: In addition to the "reserved gate" device of transforming legal picketing at a construction site into illegal picketing, there is a new device known as "separate hours." The U.S. Court of Appeals for the District of Columbia Circuit rendered a decision April 11, 1969, in the case of *Plumbers Local Union No. 519 v. National Labor Relations Board* which refused to set aside the National Labor Relations Board's position that otherwise lawful Moore Dry Dock picketing during the regular hours of construction work—that is, from 8 a.m. to 4:30 p.m.—becomes unlawful situs picketing when the primary employer changes the work hours of his employees after 4:30 p.m. on weekdays and during the daytime on weekends.

In view of these recent developments, which have their origin in the *Denver Building Trades* rule itself, the need for congressional action to overturn the restrictive and unrealistic ruling in *Denver* is far greater in 1969 than in previous years when remedial legislation was requested by the last four Presidents of the United States and approved by every legislative committee to report on such legislation.

6. Some have questioned the need for this bill as remedial social legislation by pointing to the high average hourly earnings of construction workers in certain locations. There are, however, several fallacies in this approach. First, although average hourly earnings of construction workers are generally higher than those of other manual workers, the more relevant figures relating to average annual earnings reveal that construction workers earn considerably less than employees in a number of other heavy industries. Thus, according to the figures from the Bureau of Labor Statistics, as reported in the *Monthly Labor Review* for September 1967, construction workers had average hourly earnings in 1966 of \$3.87, compared with \$2.89 for production workers in durable goods industries, and \$3.05 in mining. However, the average annual earnings picture, based on the social security figures for 1964, which represent the latest such figures available, is considerably different.

I would like to emphasize here we tried to get the latest figures but they are apparently not available, so we had to use these 1964 figures, but I think it does indicate the relationship of these industries. And the table we have here shows as far as average annual earnings within the industry are concerned:

Contract construction.....	\$6,305
Chemicals and allied products.....	7,375
Petroleum refining and related industries.....	8,078
Primary metals industries.....	7,021
Machinery, except electrical.....	6,869
Motor vehicles and equipment.....	7,386

I might repeat, again, at that time when motor vehicles and equipment rate was annually \$7,386, contract construction was \$6,305.

Returning to the statement:

The reason for the disparity between hourly and annual earnings is found in the seasonal nature of the construction industry, a problem which is currently under congressional scrutiny. The problem is so serious that, for more than 10 years, the unemployment rate in this industry has been running at more than double that for the Nation as a whole. In 1966, for example, compared with an overall unemployment rate of 3.5 percent, unemployment in the construction industry ran at a rate of 8.1 percent. In addition to seasonal unemployment, workers in the construction industry face still another hazard from bad weather even during peak seasons. The September 1967 *Monthly Labor Review* revealed that construction workers are also more likely to be unemployed at some time during the year than workers in any major industry other than agriculture, and are also likely to have several periods of unemployment and to be jobless for a total of 15 weeks or more.

In short, any wage comparisons based on average hourly earnings have little if any realistic value. Because of the seasonal and other fluctuations mentioned above, a meaningful comparison of the construction industry with other industries can be made only on the basis

of average annual earnings. And, as revealed by the figures reported by the Bureau of Labor Statistics as of the time I have indicated before, 1964 figures, construction workers on the average earn less per year than those in other industries reported in the study referred to above. Indeed, the average annual earnings of construction workers reported was more than \$1,000 less than production workers in the automobile industry and almost \$2,000 below that of employees in petroleum refining and related industries.

A second fallacy in using even average hourly earnings in construction is that the figures are just that—a national average based in part on rates prevailing in highly organized, large industrial centers. A study of some of the current prevailing wage determinations under the Davis-Bacon Act in unorganized nonmetropolitan areas reveals a very different picture, however, and one showing very tangible results of a disadvantage in economic power which would be remedied by enactment of this legislation. In North Carolina, for example, some of the hourly rates found to be prevailing were as follows:

Classification	Location	Date of determination	Rate
Laborers.....	Asheville.....	Feb. 25, 1969	\$1.60
Roofers.....	Charlotte.....	Mar. 14, 1969	1.60
Glaziers.....	do.....	Mar. 14, 1969	1.65
Electricians.....	Thomasville.....	Mar. 3, 1969	2.00
Plumbers.....	do.....	do.....	2.00
Carpenters.....	Mount Olive.....	Mar. 14, 1969	1.65
Painters.....	Severen.....	Mar. 4, 1969	1.60

In South Carolina, virtually identical figures were found in some instances:

Classification	Location	date of determination	Rate
Laborers.....	Easley (vicinity Greenville).....	Feb. 27, 1969	\$1.60
Carpenters.....	Blackville.....	Mar. 10, 1969	1.75
Glaziers.....	Due West (Abbeville County).....	Mar. 2, 1969	1.60
Electricians.....	Blackville.....	Mar. 10, 1969	2.00
Plumbers.....	do.....	do.....	2.25

The picture is the same in Georgia:

Classification	Location	Date of determination	Rate
Laborers.....	Byron (Fort Valley).....	Mar. 6, 1969	\$1.60
Carpenters.....	Ashburn.....	Mar. 5, 1969	2.00
Painters.....	Soperton.....	Mar. 10, 1969	1.60
Electricians.....	Greenville.....	Mar. 6, 1969	1.88
Ironworkers.....	DeKalb and Gwinnett Counties.....	Mar. 11, 1969	1.80
Plumbers.....	Ellijay.....	Mar. 5, 1969	2.00

Similarly, a March 14, 1969, determination for Samson, Ala., shows the following rates:

Laborers	\$1. 60
Glaziers	2. 00
Roofers	2. 00
Electricians	2. 50
Plumbers	2. 50

Nor are these figures restricted to any one area of the country. It is not just Southern States. A March 2, 1969, determination for Worcester County, Md., shows:

Laborers	\$1. 60
Carpenters	2. 55
Cement masons	1. 90
Sheet metal workers	2. 30
Painters	2. 25

On a current highway job in Oxford County, Maine, where the only classifications are for laborers, truck drivers, and power equipment operators, a determination dated February 24, 1969, lists prevailing rates of \$1.60, \$1.60, and \$1.60-2.40, respectively.

A March 13, 1969, determination in Plainville, Kans., lists the following rates:

Laborers	\$1. 60
Roofers	2. 25
Glaziers	2. 40
Iron workers	2. 25
Cement masons	2. 25

From these figures, it is readily apparent that hourly earnings reflecting a national average in the construction industry do not present a truly accurate picture of the very low construction wage rates prevailing in many communities across this country. These latter figures serve both to answer the claim that construction wage rates generally are high enough and to demonstrate the need for this proposed legislation.

7. We have reviewed the testimony of Secretary of Labor George P. Shultz since the transcript of his testimony of Tuesday, April 22, became available. We welcome the addition of the Nixon administration to the list of the four prior Presidential administrations which have supported the situs picketing principle.

Secretary of Labor Shultz formulated his general position on the proposed legislation as follows:

I am here today to indicate my support for legislation to legalize common situs picketing, if that legislation is carefully designed to incorporate appropriate and essential safeguards.

I recognize that the primary purpose of this legislation is to equalize the right to picket in construction and industrial sites including the right to picket for organizational purposes. I am sympathetic to such equalization. Further, in this legislation as in all other labor legislation the public interest and the rights of employees and neutral third parties must be protected.

We should like to point out that H.R. 100, as presently drafted, contains a number of limitations, or "safeguards," on the right to engage in situs picketing in the building and construction industry.

It should be realized that the initial position of the labor movement as far as this legislation is concerned was to redefine "secondary boycotts" in the Taft-Hartley Act as not including the multicontractor

common site problem. Our initial drafting approach was actually used by the Congress on a similar problem in the apparel and clothing industry. The language of the second proviso to section 8(e), which was enacted by Congress as part of the Landrum-Griffin Act, redefines "secondary boycotts" in the apparel and clothing industry without regard to the lawfulness or unlawfulness of the labor conduct which is involved.

The concept that the redefinition of the secondary boycott in the building and construction industry should be limited to cases where "there is a labor dispute not unlawful under this act or in violation of the existing collective bargaining contract" was advocated by the Eisenhower administration as a limitation or "safeguard."

As we have indicated previously in this statement, the appendix shows clearly that H.R. 100 includes all the safeguards or limitations which the Eisenhower administration thought necessary and actually has a few additional limitations which have developed during the course of the complex legislative history of this bill.

We believe that the essential safeguards and limitations to protect the public interest and rights of interests other than organized labor are already contained in H.R. 100, and we trust that this committee, after considering all the views that are presented and after its study of the matter, will be of the same opinion.

We share the Secretary's desire as stated in his concluding observations on the general subject of situs picketing legislation, "to put this inflammatory issue behind us." We agree that the resolution of this issue will advance the efforts of the industry to go forward in a co-operative manner to work on other pressing and important problems. And we deeply appreciate the Secretary's offer "to add our efforts and resources"—that is, the Department of Labor, I assume, and the administration—"to bring about a considered solution of this matter."

Then we have the appendix set up in the usual style which compares H.R. 100 with section 503 of S. 748 to prove our point that H.R. 100 has all the limitations and safeguards that were in the Eisenhower administration bill, plus some others.

(The appendix referred to follows:)

APPENDIX A

H.R. 100 (And Relationship to Section 503(a) of S. 748)

(Key: Brackets indicate language used in S. 748 but not in H.R. 100; italic indicates new material added by H.R. 100.)

Provided further, That nothing contained in clause (B) of this paragraph (4) shall be construed to [make unlawful where not otherwise unlawful] *prohibit* [ii] any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers[.] and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: *Provided*, That in the case of any such site which is located at any military facility or installation of the

Army, Navy, or Air Force, or which is located at a facility or installation of any other department or agency of the Government if a major purpose of such facility or installation is, or will be, the development, production, testing, firing, or launching of munitions, weapons, missiles, or space vehicles, prior written notice of intent to strike or to refuse to perform services, of not less than ten days shall be given by the labor organization involved to the Federal Mediation and Conciliation Service, to any State or territorial agency established to mediate and conciliate disputes within the State or territory where such site is located, to the several employers who are jointly engaged at such site, to the Army, Navy, or Air Force or other department or agency of the Government concerned with the particular facility or installation, and to any national or international labor organization of which the labor organization involved is an affiliate. The notice requirements of the preceding proviso are in addition to, and not in lieu of the notice requirements prescribed by section 8(d) of the Act. In determining whether several employers who are in the construction industry are jointly engaged as joint venturers at any site, ownership, or control of such site by a single person shall not be the only factor considered.

Mr. THOMPSON. Thank you very much.

Mr. Haggerty's statement is a splendid one. With respect to the history of this legislation, it is, to say the very least, complicated. It happens that in 1959 the chairman was a conferee when the so-called Landrum-Griffin Act was considered, and Mr. Haggerty's reference to the relief granted to the needle trades is quite accurate. As a matter of fact, I have been bewildered since that time by the parliamentary ruling that the relief granted to the needle trades under 8(e) was germane to the bill the conferees were considering, but that in an analogous situation the common situs relief for the building trades was not germane. Had it been considered germane we would not be here today. We would have had for the construction industry the same relief that the apparel and clothing industry got, which has worked out extremely well between labor and management in that industry.

Looking over the witness list, it appears that you will be the only witness who supports H.R. 100 without qualification, and I think it is important to note that you are speaking for, as you say, 17 national and international unions with thousands of members. There will be several witnesses following you today and next week opposing the bill, but I believe that you probably speak for more citizens than they do in terms of organization membership.

Mr. SHERMAN. Mr. Chairman, I think we can safely say that we are speaking not only for the millions of workers in the building and construction industry but for the entire American labor movement which, of course, is much larger, because, as the records show, and I didn't want to burden this record with additional and duplicating statements, this legislation has the wholehearted support of the AFL-CIO as evidenced by communications from President Meany and by the actions of the executive council. And, as you know, we had some problems years ago with the industrial union department, but those were resolved and the industrial union department is in complete support of the legislation.

When you come down to the question of support, it must be recognized, just as in the case of other labor legislation, that the fact that this involves the construction industry does not mean that it is not an issue of fairness and equity as far as all of American labor are concerned.

Mr. THOMPSON. We understand that, and, in addition, I made clear in the record that in the past major civil rights leaders have sup-

ported this legislation. This is an extraneous issue which is sometimes raised because of certain allegations.

I just have a few questions. I hope they do not seem tedious to you, but, unhappily, some of the opponents of the legislation insist on misrepresenting what H.R. 100 does. Whether they do it consciously or because of ignorance of the law, I do not know.

It is not correct that H.R. 100 amends only subparagraph (B) of section 8(b) (4) of the act?

Mr. SHERMAN. That is my understanding, Mr. Chairman.

Mr. THOMPSON. And is it not correct that H.R. 100 in no way amends section 8(b) (7) and, therefore, does not affect present laws governing organizational or recognitional picketing?

Mr. SHERMAN. That is quite correct.

Mr. THOMPSON. And, further, is it not true that it does not amend 8(b) (4) (D) and, therefore, does not in any way affect the present law regarding jurisdictional disputes?

Mr. SHERMAN. Well, I think it is entirely clear that the enactment of this bill would not in any way affect the restrictions on labor that are set down in 8(b) (7), 8(b) (4) (D) and so forth.

In addition, if I may venture to comment, it goes further. It says that this definition of secondary boycotts is not available if the object of the labor conduct would transgress any other provision of the law.

If I may say, in line with the comments that were made by the Secretary of Labor about trying to get back to original principles and so on, it should be realized that the Taft-Hartley Act and its amendments were on the whole not a prolabor bill. I don't want to be funny about it, but it is obvious to everybody that that is the most far-reaching Federal restriction and regulation of labor, so when we say that something is not otherwise unlawful under the Taft-Hartley Act we are bringing in a whole big area, which has the effect of limiting this definition.

Mr. THOMPSON. That language—"not otherwise unlawful"—was added to the bill in previous sessions and kept in this session to assure, and to reassure, those who are supposed to know something about the law that this would not in any way affect anything else that was unlawful. That is the reason for this series of questions, because 8(b) (7), 8(b) (4) (D), and other sections of the act have been mentioned.

This bill does not in any way change the present law regarding product boycotts, and to the extent that product boycotts are now unlawful, would they not remain unlawful if H.R. 100 were enacted?

Mr. SHERMAN. That is correct.

Mr. THOMPSON. In other words, you agree that H.R. 100 is intended only to reverse the *Denver Building Trades* case and that it is a very narrowly drawn bill? It amends only subparagraph (B) of 8(b) (4) and it does not affect any other provisions of the existing law or any other sections of the act?

Mr. SHERMAN. That is a very precise statement of what the bill does.

Mr. THOMPSON. The best proof of this would be, if and when we get a bill, if any amendment to 8(b) (4) (D) were offered, it would be subject to a point of order as not being germane to H.R. 100.

Mr. SHERMAN. That is my understanding of the rules of germaneness.

Mr. THOMPSON. Thank you very much, Mr. Sherman. I am sorry Mr. Haggerty could not be here. I hope you will express the appreciation of the committee to him.

Mr. SHERMAN. I am delighted, and will do so.

I would like to add a point, if I may, on this civil rights issue that you touched on very lightly.

In 1967 when we appeared here, there was a great deal of propaganda flying around the Hill about the so-called *St. Louis Arch* case. You recall that one of the Congressmen engaged in some rather intensive questioning about that matter. It was indicated from our side that there was no basis for the charges with respect to racial discrimination.

Mr. THOMPSON. The Chair might say that he made a personal investigation of that situation because of the gravity of the accusation and the Chair found that the dispute there was simply the presence on the construction site of some nonunion workers who coincidentally happened to be black.

Mr. SHERMAN. That is correct. As a matter of fact, what happened was that a trial examiner of the Board in the spirit of getting in the act made some comments about the race issue which the National Labor Relations Board itself made very clear it was not adopting or relying on. But, more than that, the Department of Justice, partly because of this publicity—and the reason why I say that is because no complaint had ever been filed by a living person on this subject—did file a section 707 suit against the unions there and after protracted litigation we got a decision from the Federal district court which I would like, if I may, to present for the record, because there was so much made of it last year—

Mr. THOMPSON. Without objection, it will be made a part of the record.

(The document referred to follows:)

United States District Court, Eastern District of Missouri, Eastern Division

No. 66 C 58 (2)

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION No. 36, AFL-CIO; AND THE LOCAL No. 1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, DEFENDANTS

MEMORANDUM

This case has been submitted for decision on the basis of briefs filed by the parties, exhibits, and testimony adduced at trial held June 15 through 20, 1967.

The United States Government filed suit against defendants on February 4, 1966, alleging that defendants had violated the Civil Rights Act of 1964 (42 U.S.C., § 2000e through 2000e-15) and seeking injunctive relief to inhibit future violations. Defendant Sheet Metal Workers Union Local No. 36, AFL-CIO (hereinafter referred to as "Local 36") and defendant Local No. 1, International Brotherhood of Electrical Workers, AFL-CIO (hereinafter referred to as "Local 1") are the only two defendants against whom suit continued. Both are labor organizations as defined by 42 U.S.C. 2000e, and both are within the scope of 42 U.S.C. 2000e-2(c). The suit was filed by the Attorney General pursuant to 42 U.S.C., § 2000e-6, and this Court has jurisdiction thereunder.

When the original complaint was filed on February 4, 1966, it included two counts and several additional defendants. Count I of the complaint was dismissed by order of this Court, dated July 26, 1966. Thereafter, in response to a motion by the Government, all defendants remaining in Count II, except Local 36 and Local 1, were dismissed without prejudice, and on June 15 through 20, 1967, trial proceeded against Local 36 and Local 1 on Count II of the complaint. At the close of trial, plaintiff and defendants submitted proposed findings of fact and conclusions of law and supporting briefs.

The Civil Rights Act of 1964, 42 U.S.C. § 2000e-6, provides:

"Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States . . ."

The Civil Rights Act of 1964 went into effect on July 2, 1965, and, therefore, any violations of this Act by defendants must have occurred after that date and prior to February 4, 1966, the date on which this suit was filed. The Government alleges that by failing to admit Negroes into Local 1 and Local 36 on a non-discriminatory basis, by failing to admit Negroes into apprenticeship training programs on a non-discriminatory basis, and by failing to operate their respective hiring hall referral systems on a non-discriminatory basis, defendants have discriminated against Negroes in violation of the latter's civil rights.

The Government alleges specifically that nepotism is a policy and practice of both unions, that the unions have failed to inform Negroes of the opportunities to become members of the unions, and that they have failed to organize employers who employ Negroes.

It is the function of this Court to determine, on the basis of the evidence presented at the trial, whether during the period July 2, 1965, to February 4, 1966, the defendants have, in fact, engaged in a "pattern or practice" which constitutes a violation of the Civil Rights Act of 1964.

Local 36 is a labor organization representing sheet metal workers in the construction industry in the City of St. Louis, Missouri, and forty-four counties in the eastern half of the State of Missouri, and has contracts with most of the sheet metal contractors in the geographical area which it covers. The parties stipulated that on February 4, 1966, the date on which this lawsuit was filed, Local 36 had approximately 1,250 journeymen members, all of whom were white, and 110 apprentices, one of whom was Negro, and that at the time of trial, Local 36 had approximately 1,275 journeymen members, all of whom were white, and 116 apprentices, three of whom were Negro.

Persons who wish to become journeymen members of Local 36 may do so in one of three ways: by making direct application to the local and taking a journeyman's examination; through participation in the apprenticeship program; and as a result of Local 36's organizational campaigns.

Persons making direct application for membership in Local 36 fill out Application for Journeyman Sheet Metal Workers Examination and are given written tests, a layout problem, and a test in welding. Those who pass these examinations then fill out an Official Application Form and upon payment of the standard initiation fee, which is one hundred times the current hourly wage rate for journeymen sheet metal workers, are admitted into union membership. There is no vote of the membership on new members and the application blank's spaces for vouchers are automatically filled in by members of the Executive Board.

There was no evidence that a Negro has, at any time, either before or since the passage of the Civil Rights Act of 1964, applied to take a journeyman's examination and thereby achieve membership in Local 36. There was also no evidence indicating that most of the persons achieving journeyman membership in Local 36 during the period from July 2, 1965, to April 15, 1967, were related to journeyman members of Local 36. Plaintiff sent out questionnaires to all one hundred fifteen persons admitted to Local 36 as journeyman members during this period, and of the ninety replies received, eighty (eighty-eight percent) indicated that the new member was not related by blood or marriage to members or former members or apprentices of Local 36.

Local 36 has a policy of organizing unorganized shops in its jurisdictional area, and persons in the shop being organized are not required to take a journeyman's examination. Local 36 charges an initiation fee of from \$50 to \$150 during an organizational campaign (depending on the location of the shop), but once a shop

is organized, new persons coming into Local 36 are required to pay the regular fee of one hundred times the journeyman's hourly wage rate. The rate was approximately \$5.00 per hour on January 1, 1966. In addition, since July 1, 1966, shops have been required to post a \$2,000 bond to assure that payments are made to welfare, pension, and vacation funds.

The evidence showed that Local 36 attempted to organize Kennedy & Sons Sheet Metal Shop, a Negro shop, in December 1966. This shop was under a Midwest Contractors Association collective bargaining agreement with Local 99 of the Congress of Independent Unions (CIU) for the period June 15, 1965, through March 1, 1967, and the month of December 1966, was the so-called "soft period" when organizational negotiations could take place without being in conflict with the contract bar rules of the National Labor Relations Board. Eugene Zimmerman, then business manager of Local 36, contacted Arthur Kennedy, owner of the shop, personally, and representatives of Local 36 contacted the sheet metal workers employed by Kennedy and left application forms for the men to sign. The negotiations between Local 36 and the Midwest Contractors Association, including Kennedy & Sons, were broken off by the Midwest Contractors Association and none of Kennedy's employees mailed or took completed application forms to Local 36.

Clarence Lee and Vernon Wells are Negro sheet metal workers, both with full-time jobs at McDonnell Aircraft Corporation, who have formed a partnership called Wells and Lee Heating Service. Lee testified that he spoke to Zimmerman in April 1967 about joining Local 36. Zimmerman told Lee that the initiation fee was \$500 per man and that if Wells and Lee would come to the office, they could proceed to become members of Local 36. Zimmerman also told Lee that Local 36 would sign a contract with Wells and Lee Heating Service, and that the partnership would be required to post a \$1,000 bond to insure payment of vacation moneys. Lee was to contact Zimmerman later, but never did, nor did Lee ever file a written or formal or informal application for membership in Local 36. Wells testified that he called Local 36 and spoke to some unidentified person who said it would cost \$2,000 to join the union. Both Wells and Lee subsequently joined Local 99, CIU, and had no further interest in Local 36.

The sheet metal workers apprenticeship program is run by the Joint Apprenticeship Committee (hereinafter referred to as the JAC), which is composed of three sheet metal contractors and three sheet metal journeymen. In 1964, the JAC revised the qualifications and procedures of the program, and sent them to the Department of Labor for approval. On February 11, 1965, the Department of Labor notified the JAC that the program was in compliance with the Code of Federal Regulations, Title 29, Part 30, dealing with discrimination in apprenticeship and training. The revised procedures provide that all applicants must fill out an application, take qualifying tests administered by an independent testing agency, and be interviewed by the JAC. Applicants who receive eighty points out of a possible two hundred points on the tests and interview are placed on the "available for training" list according to point score, and the person on the list with the top point score is sent to a contractor when he requests an apprentice.

From July 2, 1965, to the date of trial, eighteen to twenty Negroes inquired at the union hall about the apprenticeship program, and of this group, twelve Negroes filled out application forms and were assigned a testing date. Only two of the Negroes appeared for the tests (even though twelve signed a form stating that they would appear), and these two went on to be interviewed and subsequently became apprentices. The parties stipulated that a third Negro had been accepted into the program in 1963, i.e., before the enactment of the Civil Rights Act of 1964.

The evidence showed that approximately sixty-six percent of the apprentices admitted to training since July 2, 1965, are not related by blood or marriage to a member or former member or apprentice of Local 36, and rejected applicants included at least five sons of members of Local 36, one of whom had a father, a brother and a cousin in Local 36, the brother being a current member of the Executive Board.

In May 1965, the JAC sent letters to thirty-four schools and organizations stating that the sheet metal workers apprenticeship program was in conformance with Title 29 and was accepting applicants, together with a summary of the amended qualifications and procedures. Similar information was published by the St. Louis Post-Dispatch in February 1966, in a one-quarter page story about the program, which was printed in response to a request from the JAC. In April 1967,

letters and summaries were sent to eighty-four schools, agencies and organizations, and since January 1966 the JAC has cooperated with the Department of Labor's Apprenticeship Information Center in distributing information about the sheet metal workers apprenticeship program by means of newspapers, radio, television, and distribution of information to schools, minority groups, and interested persons.

There was no evidence that anyone has filed a complaint or charge against Local 36 with the Department of Justice, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, or under state or local laws prohibiting racial discrimination. (§§ 296.010-296.070, V.A.M.S., and ordinances of the City of St. Louis, Missouri.)

Until January 1, 1968, Local 36 had a non-exclusive referral system which permitted anyone looking for work in the sheet metal trade, regardless of whether or not he was a union member, to sign an out-of-work card which was stamped with the date and time it was signed. Applicants were then placed on an out-of-work list in the order stamped on the card, and when a sheet metal contractor called the union hiring hall for a man, the top man on the list (and possessing special skills, if they were required for the particular job) was sent out, regardless of whether or not he was a union member. There is no evidence that a Negro ever signed up for work referral under the non-exclusive referral system in effect prior to January 1, 1968.

The revised referral system negotiated between Local 36 and the sheet metal contractors which went into effect on January 1, 1968, provides for four referral groups: Group I is composed of persons having four years experience in the sheet metal construction industry, who reside within the local's jurisdictional area, have passed a journeyman's examination, and have been employed under a collective bargaining agreement between the parties (Local 36 and the sheet metal contractors with whom it has collective bargaining agreements) for a period of at least one year in the last four years; Group II includes persons with four years experience in the sheet metal construction industry who have passed a journeyman's examination; Group III includes persons having one year experience in the sheet metal construction industry; and Group IV includes college students, registered applicants on the apprenticeship training list, and high school graduates seeking summer employment. All persons in Group I are referred out for work before anyone in Groups II, III or IV is contacted, all persons in Group II are referred out before anyone in Groups III or IV is called, etc.

The contract in which this new system is set forth provides that all referrals shall be made "without discrimination against such applicants by reason of membership or nonmembership in the union, race, creed, religion, color, national origin, sex or ancestry . . ." It is clear that the groups distinguish between union and non-union members, but because the new system was not effective until long after the trial of this suit, the new system could not constitute a violation of the Civil Rights Act during the period from July 2, 1965, to February 4, 1966, and no evidence regarding its operational practices was presented. There was no evidence before the Court showing that the system in operation during the period July 2, 1965, to February 4, 1966, was in violation of the Civil Rights Act of 1964.

Local 1 is a labor organization representing employees in the construction, manufacturing and service industries in the City and County of St. Louis and some twenty-four surrounding counties in the eastern and southern part of the State of Missouri. It is the bargaining representative for about ninety-five percent of the electricians engaged in the construction of major residential, commercial, and industrial projects in the City and County of St. Louis, and has collective bargaining agreements with a substantial majority of construction electricians in this area. Local 1 has approximately five thousand members, two thousand of whom have construction classifications.

Membership in Local 1 (like membership in Local 36) may be achieved by direct application to take a journeyman's examination and passing it, through participation in the apprenticeship training program, and as a result of Local 1's organization campaigns.

When making direct application, an applicant must be working at the electrical trade under Local 1, IBEW, collective bargaining agreement. The Executive Board of Local 1 investigates all applicants, and after inquiring about ability and work performance from past and/or present employers, the membership is presented with a recommendation for or against admission of each applicant. Admission to union membership is by majority vote of the membership present at a regular membership meeting. For some construction classifications, an appli-

cant must pass an examination relating to the type of work involved, but every member in attendance at a membership meeting votes on all applications for membership regardless of his classification.

A person who is a member of Local 1 may change his classification after five years of experience, and the procedure for a change in classification is similar to the procedure for admission into membership. Members with nonconstruction classifications who desire to switch to construction classifications (which are generally better paid) can gain construction work experience during peak employment periods in order to qualify for a classification change.

On July 2, 1965, Local 1 had twenty-five Negro members, all in non-construction classifications, and by February 4, 1966, the number had increased to thirty-five. There were no Negroes in construction classifications and during this period no Negroes, other than Walter Hampton, discussed below, applied for membership in construction classifications. Since February 4, 1966, twelve Negroes have applied for membership in construction classifications and all twelve have been admitted.

Plaintiff sent questionnaires to the twenty-nine persons admitted as journeyman members with construction classifications during the period July 2, 1965, to August 31, 1966. Of the twenty-five persons responding, twenty-three were white, two were Negro and eight (about one-third) were related by blood or marriage to members or former members or apprentices of Local 1. Of the thirty-six persons who became members in non-construction classifications during the period September 1, 1966, to December 27, 1966, thirty-five responded to similar questionnaires, and of these thirty-five, thirty-four were white, one was Negro, and eleven were related by blood or marriage to members or former members or apprentices of Local 1.

Other than Walter Hampton, there is no evidence that since July 2, 1965, any Negro has applied for union membership and failed to achieve it.

Walter Hampton, a young man with five years experience in the electrical trade, made two trips to Local 1's union hall, one about October 22, 1965, and the other on November 8, 1965. In October, Hampton asked to join the union and was told by the business manager, Norman Lanemann, that in order to apply for membership in Local 1, a man had to be working at the trade for a contractor with whom Local 1 had a collective bargaining agreement. Lanemann suggested that Hampton go back to the hiring hall and sign up on the out-of-work list (although Hampton was not out of work at that time), but Hampton did not do so. (Hampton denied that Lanemann so suggested, but Lanemann's testimony was corroborated by the testimony of the Superintendent of the Jefferson National Expansion Memorial, commonly called the "Gateway Arch", to whom Hampton related the incident by telephone moments after his conversation with Lanemann.) Lanemann's response to Hampton's request for an application blank was in accord with, and gave Hampton accurate information about, Local 1's practices and procedures. There is no evidence that Hampton was given incorrect information or that he was treated differently from other applicants on this occasion. Hampton returned to the union hall on November 8, 1965, at which time he did register for the out-of-work list by signing the appropriate card. Hampton was placed in the correct priority group according to his experience, and there was no evidence that anyone was improperly referred ahead of him. Hampton entered the army in January 1966 and thereafter was not available for referral by the union. While Hampton's testimony indicated that he did not completely understand the hiring hall procedures, there is no evidence that Hampton was treated differently from the way in which any other applicant in the same situation would have been treated, either because of his race or for any other reason.

Members are also admitted to Local 1 through organizing campaigns. The evidence presented at trial showed that prior to July 2, 1965, several Negro electrical contractors, among them Witt, Harding and Stuart, tried to get their shops organized under Local 1's auspices, and were repeatedly rebuffed. Since that date, however, each of these contractors has been told that he and his employees are welcome in Local 1.

Witt and his two Negro employees made arrangements to join Local 1 prior to the filing of this lawsuit, took the journeyman's examination in February 1966, and became construction members of Local 1 in March 1966. At the time suit was filed, James Harding, a Negro electrical contractor employing ten Negro electricians, was under contract with the CIU, which contract ran from June 15, 1965, to March 1, 1967. Until December 1966, Local 1 could not legally sign a

contract with Harding Electric, but as soon as it could legally do so, Local 1 petitioned for an NLRB election, and later in February 1967 Local 1 was certified as bargaining representative for Harding's employees, all of whom became members of Local 1, with construction classifications, in April 1967.

In the weeks following the mid-December 1966 meeting between the AFL-CIO and members of the Midwest Contractors Association, Lanemann made repeated calls to Wilbur Stuart, another Negro electrical contractor, and requested that Stuart contact him. Stuart testified that he never did, because he has everything he wants with the CIU, of which he is a member.

Persons trained in the apprenticeship program sponsored by AFL-CIO affiliated contractors and Local 1 are admitted into union membership in construction classifications after serving a one-thousand hour probationary period. The apprenticeship program is run by a Joint Apprenticeship Committee (JAC), which is composed of three members of Local 1 and three electrical contractors (members of the National Electrical Contractors Association hereinafter referred to as "NECA"). The JAC meets once a month to supervise the program, but daily management of the program is entrusted to the Secretary-Director of the JAC, whose job is a full-time, salaried position. The position is presently filled by Michael Gibbons, president of Local 1. Apprentices are selected on the basis of objective tests and interviews. The tests are graded by Gibbons and the interviews are conducted by at least one representative from Local 1 and one representative from the NECA. Local 1, thus, has a substantial voice in the operation of the apprenticeship program, but does not exercise exclusive control over it.

Local 1 admits that until 1964, sons of union members were given preference in applying for the apprenticeship program, but following the publication of Title 29, Part 30, C.F.R., the qualifying standards were revised to provide for selection of apprentices on the basis of objective criteria. The new standards were accepted by the Department of Labor's Bureau of Apprenticeship and Training in April 1964, as being in compliance with Title 29, and no complaints of discrimination have been filed with the Department of Justice, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, or under state or local laws prohibiting racial discrimination. (§§ 296.010-296.070 V.A.M.S., and ordinances of the City of St. Louis, Missouri.)

The evidence showed that since July 2, 1965, four Negroes have passed the objective qualifying examinations for apprenticeship training. Of these, one failed to appear for his interview. The remaining three Negroes were interviewed and were placed in the program.

At plaintiff's request, questionnaires were sent to recent apprentice applicants concerning relations by blood or marriage to members of Local 1. With respect to the July 1965 apprenticeship applicant group: of the fifty-one placed, forty-eight responded, forty-seven of whom were white, one of whom was Negro, and sixty percent of whom were related to members or former members or apprentices in Local 1 by blood or marriage; of the three hundred seventy-five rejected, two hundred fifty responded, fifty-three percent of whom were related to union members by blood or marriage. Of those in the latter group showing their race, two hundred thirty-five were white and three were Negro. With respect to the March-June 1966 group of applicants: of the eighty-eight accepted, seventy-three responded, (sixty-seven white and three Negro), forty percent of whom were related to union members by blood or marriage; of the eighty rejected, sixty responded (fifty-six white and three Negro) of whom forty-three percent were related to union members by blood or marriage.

These figures do not provide evidence of racial discrimination and/or nepotism in the selection of apprentices.

Beginning in 1964, information about the availability of the electrician's apprenticeship program was sent to the public and parochial schools in Local 1's jurisdictional area, to the Bureau of Apprenticeship and Training, and to the Missouri Division of Unemployment. Since the opening of the Apprenticeship Information Center in December 1965, the JAC has provided the center with full and current information on the standards and procedures of the apprenticeship program, and this information has been distributed by the Center through various media to interested parties. In addition, Local 1, the JAC, and the NECA have sought to publicize to the Negro community the opportunities offered by the electrical trade by sponsoring programs for counselors from predominantly Negro high schools, programs for Negro high school students, including "career day" appearances at high schools with Negro student bodies, meetings with civil rights groups, and appearances on vocational programs of lower schools with Negro student bodies.

The evidence shows that Local 1 has actively publicized the availability of apprenticeship training opportunities in the electrical trade to the Negro community since the 1964 revision of the apprenticeship program, and that Local 1's admission practices are designed to discover the best qualified applicants, regardless of race or relationship of the applicant to union members.

The referral system used by Local 1 in its hiring hall is similar in structure to the system which Local 36 adopted effective January 1, 1968. The hiring hall at Local 1 was created in November 1958, pursuant to a collective bargaining agreement between Local 1 and the St. Louis Chapter of the National Electrical Contractors Association. It provides that: "The Union shall be the sole and exclusive source of referrals of applicants for employment." (Art. III, § 2), and that such applicants shall be selected and referred for employment "without discrimination against such applicants by reason of membership or non-membership in the Union . . ." It also provides, however, that applicants for referral shall be placed in one of four groupings, according to various factors, among which is their previous experience "under a collective bargaining agreement between the parties to this agreement." Group I includes journeymen in industrial construction who reside in a defined area and who "have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this agreement." Group II includes journeymen in residential construction with the same qualifications. Group III includes experienced electricians (other than journeymen) "who have been employed for at least six months in the last three years in the electrical construction industry under a collective bargaining agreement between the parties to this agreement." Group IV includes: "All applicants for employment who have worked at the electrical construction industry for more than one year." There is a fifth classification, "O", not mentioned in the agreement, but used by the hiring hall to designate persons without experience who file applications. Since April 1966, a man must be physically present in the hiring hall to be referred out from it, and only when a contractor is seeking someone with special skills will the Business Agent (who runs the hiring hall) make telephone calls to persons not present in order to attempt to find someone to perform the work.

The evidence presented showed that only one Negro, Walter Hampton, signed up for referral under the hiring hall referral system. There was no evidence that Hampton, or anyone, who signed up for referral was placed in an improper group or passed over when an opportunity arose, or was otherwise discriminated against because of his race.

The Government argues that the grouping themselves are illegal because they distinguished between union and nonunion men, and because, in view of the past practices of these unions, such distinctions effectively discriminate against Negroes.

The Labor-Management Relations Act, 29 U.S.C. § 158(b) (2), provides:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section . . ."

And subsection (a) (3) provides:

"(a) It shall be an unfair labor practice for an employer—

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . ."

It has been held that an open-ended list whereby local members coming in later are placed ahead of non-members waiting for work simply because they are local members is an illegal preference under these sections of the Labor-Management Relations Act, *N.L.R.B. v. Local 111, United Bro. of Carpenters, etc.* 278 F.2d 823 (1st Cir. 1960). Original jurisdiction of such complaints, however, is vested in the National Labor Relations Board, 29 U.S.C. § 160; it does not constitute the kind of discrimination prohibited by the Civil Rights Act of 1964, and does not fall within the scope of this Court's original jurisdiction. *Myers v. Bethlehem Corp.*, 303 U.S. 41 (1938), at 48.

The Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c) provides:

"It shall be an unlawful employment practice for a labor organization—

"(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

"(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would

deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

"(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section."

Section 2000e-6(a), 42 U.S.C., provides:

"Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action . . ."

Such a "pattern or practice" must be shown to have existed after July 2, 1965, i.e., after the effective date of the Act, because discriminatory actions and conduct which occurred prior to that date cannot constitute a violation of the Act. In their Interpretative Memorandum of Title VII, Senators Clark and Case, two of the leading supporters of the Act, said of the title, "Its effect is prospective and not retrospective," 110 Cong. Rec. 7213, and that "the principal purpose of the Commission [Equal Employment Opportunity Commission] pressing complaints is to obtain future compliance." These Senators also noted:

"There is no requirement in title VII that an employer maintain a racial balance in his work force. On the contrary, any deliberate attempt to maintain a racial balance, . . . would involve a violation of title VII because maintaining such a balance would require an employer to hire or to refuse to hire on the basis of race." 110 Cong. Rec. 7213.

Such discriminatory hiring is specifically prohibited by 42 U.S.C. § 2000e-2(j), which provides:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

Thus, in order to establish a violation of the Civil Rights Act of 1964 by these defendants, the Government must show that defendants engaged in a prohibited "pattern or practice" after July 2, 1965.

Such a "pattern or practice" is not established by evidence of "mere isolated acts of discrimination," Senator Humphrey, 110 Cong. Rec. 14,270, nor can the mere absence of Negroes in a particular group constitute proof of a pattern of discrimination in the absence of some showing that the group should represent a cross-section of a community in which there is a substantial proportion of Negroes, such as was the situation in the jury discrimination cases which establish the so-called "exclusion principle." *Norris v. Alabama*, 294 U.S. 587 (1935); *Hernandez v. Texas*, 347 U.S. 475 (1954); *United States v. Harpole*, 263 F.2d 71 (5th Cir. 1959); *United States v. Wiman*, 304 F.2d 53 (5th Cir. 1962), *Rabinowitz v. United States*, 366 F.2d 34 (5th Cir. 1966). In the instant case, the exclusion principle, without additional supporting evidence, will not operate to establish a prima facie case for plaintiff.

The absolute absence of Negroes from a group, plus evidence of specific instances of exclusion after July 2, 1965, for racial reasons, has been held to constitute evidence of a "pattern or practice" of the type prohibited by the Act. For example, in the case of *Cypress v. Newport News General & Nonsectarian Hospital Ass'n*, 375 F.2d 648 (4th Cir. 1967), Negro doctors had not applied to join the staff of defendant hospital because of the latter's long-established practices of excluding Negroes and the former's sense of futility of such an effort in the face of the hospital's notorious discriminatory policies. Suit was brought only after two Negro doctors, both of whom had higher qualifications than some of

the white doctors on the hospital staff, had applied for admission to the staff and been refused. The district court found that "[w]here no Negro physicians are on the hospital staff and application in proper form is made for staff membership by a Negro physician who meets the 'paper' qualifications and proves his competency in his chosen specialty field (if any), a prima facie inference of discrimination exists wherever the action on said application is by secret ballot and without hearing from the applicant . . ." The Court concluded that the absence of any non-racial ground for the exclusion compelled the inference that Negro doctors were barred because of their race.

In the instant case, there is no evidence that any Negro who qualified for membership or apprenticeship training in defendant locals, who applied for such in proper form, and who passed objective tests and appeared for a scheduled personal interview, was excluded. On the contrary, the evidence shows that in every instance, qualified Negroes applying for union membership and/or apprenticeship training since July 2, 1965, have been admitted therein.

The referral system used by Local 36 during the period July 2, 1965, to February 4, 1966, was above reproach, and plaintiff does not allege otherwise. Local 36's new exclusive hiring hall referral system, effective January 1, 1968, is similar to the exclusive hiring hall referral system used by Local 1 in that both give older union members seniority over newer members and non-union men for purposes of work referrals.

An exclusive hiring hall referral system is not illegal *per se*, *Teamsters Local v. N.L.R.B.*, 365 U.S. 667 (1961); *Plumbers' Union v. Borden*, 373 U.S. 690 (1963), nor is a referral system which gives old union members seniority over newer union members and non-union men. *Local #42, Asbestos Workers*, 164 NLRB No. 123 (1967); *Local 367, IBEW*, 134 NLRB No. 21 (1961).

Congress was aware of this problem when it debated the Civil Rights Act of 1964 prior to enactment. In response to Senator Hill's expressions of concern that "vested seniority rights" would not be protected under the Act, Senator Clark read into the Record a memorandum prepared by the Department of Justice, which stated in part:

"First, it has been asserted that title VII would undermine vested rights of seniority. This is not correct. Title VII would have no effect on seniority rights existing at the time it takes effect. * * * assuming that seniority rights were built up over a period of time during which Negroes were not hired, these rights would not be set aside by the taking effect of title VII. Employers and labor organizations would simply be under a duty not to discriminate against Negroes because of their race. Any differences in treatment based on established seniority rights would not be based on race and would not be forbidden by the title." 110 Cong. Rec. 7207.

Senator Clark then concluded, "it is clear that the bill would not affect seniority at all." 110 Cong. Rec. 7207.

Despite the cases cited above, some courts have come very close to holding referral seniority based on union membership illegal.

The Third Circuit Court of Appeals upheld an NLRB ruling that a union may not require past employment under collective bargaining contracts as a basis for priority in referrals, on the grounds that "the Board was justified in prohibiting the use of the prior employment requirement until the advantages from unlawful referral disappear," *N.L.R.B. v. Local 269, IBEW*, 357 F.2d 51 (3rd Cir. 1966). In the instant case, however, there is no evidence that unlawful referrals have been made in the past, and, thus, no basis for destroying resulting seniority. There was, in fact, no evidence that the referral systems of either defendant were intended to, or in practice actually did, discriminate among referents on the basis of race or color. The absence of such evidence leaves plaintiff's allegation that the systems discriminated against Negroes unsupported by any evidence presented to this Court.

In brief, the evidence shows that prior to 1964 both defendants excluded Negroes. Since the effective date of the Civil Rights Act of 1964, July 2, 1965, both unions have admitted and treated Negroes on the same basis that whites are admitted and treated. The record is devoid of any specific instance of discrimination. Further, both defendants have been making and are making a determined effort to recruit Negroes into their unions. This suit was filed at a time when no complaints of discrimination had been made to the Department of Justice, The Equal Employment Opportunity Commission, The Office of Federal Contract Compliance or to any state or city body set up to correct discrimination.

The Civil Rights Act of 1964 was not intended to penalize unions or others for

their sins prior to the effective date of the Act. It is prospective only. Neither was it passed to destroy seniority rights in unions or in business. The Act specifically forbids a union or a business from giving preferential treatment to Negroes to correct an existing imbalance of whites. In order to be a violation of this Act, there must be an intentional pattern and practice of discrimination and not an isolated instance of discrimination. There is no pattern or practice of discrimination in this case since the effective date of the Act.

The Court finds that the evidence presented by the Government does not substantiate its allegations that defendants have violated the Civil Rights Act of 1964 by discriminating against Negroes so as to exclude them from union membership, trade apprenticeship training programs, or work referrals through union hiring halls. Accordingly, judgment will be rendered in favor of defendants, and an order will issue dismissing with prejudice plaintiff's cause of action against them.

Dated this 7th day of March, 1968.

_____,
United States District Judge.

United States District Court, Eastern District of Missouri, Eastern Division

No. 66 C 58 (2)

UNITED STATES OF AMERICA, PLAINTIFF

v.

THE SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 36, AFL-CIO; AND THE LOCAL NO. 1 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, DEFENDANTS

JUDGMENT

This case has been submitted for decision on the basis of briefs filed by the parties, exhibits, and testimony adduced at trial held on June 15 through 20, 1967.

For the reasons set forth in a memorandum dated this date and incorporated in and made a part of this judgment by reference, now, therefore,

It is hereby ordered, adjudged and decreed that judgment is rendered in favor of defendants and against the plaintiff. The cause of action is hereby dismissed with prejudice.

Dated this 7th day of March, 1968.

_____,
United States District Judge.

Mr. SHERMAN (continuing). In which the Court found, and I read from the Court's decision:

The Court finds that the evidence presented by the Government does not substantiate its allegations that defendants have violated the Civil Rights Act of 1964 by discriminating against Negroes so as to exclude them from union membership, trade apprenticeship training programs, or work referrals through union hiring halls. Accordingly, judgment will be rendered in favor of defendants, and an order will issue dismissing with prejudice plaintiff's cause of action against them.

Mr. THOMPSON. That is *United States v. Sheet Metal Workers International Association No. 36*?

Mr. SHERMAN. That is correct.

Mr. THOMPSON. The citation is 280 Federal Supplement 719.

Mr. SHERMAN. It does seem to me in this whole area of the problem that it might be well for some of the opponents to present their comments on the basis of the facts rather than on the, well, versions of the facts which are put forward.

Mr. THOMPSON. I do think that there is some misunderstanding, and I did not mean when I used the word "misrepresentation" to speak in

the same tone as did a witness the other day, who in the course of his statement, accused me as the author of the bill of misleading and misrepresenting and lying, and other sorts of outrageous conduct.

It really does not disturb me so much as it amuses me, because it is simply that the gentleman really did not understand what the objective of the legislation is. His interpretation of it went far beyond that which is intended or is even susceptible of understanding by a lawyer who has really studied the matter.

Mr. SHERMAN. If I may say, Mr. Chairman, that is one of the real problems here, that, as you have indicated, that is very complex area of the law, and nobody can do anything about that, but in trying to resolve a legislative problem people can sort of talk the measure to death by raising all kinds of intricate questions in connection with it, and there has to come a time when there is a halt brought to this process.

Mr. THOMPSON. I think so, too. I will admit that it is perfectly legitimate to speculate on the effects that this might have were it to become law. That speculation, I think, should be limited to the one purpose which the bill has.

Does anyone have any questions?

Thank you very much, sir.

Mr. SHERMAN. Thank you, Mr. Chairman.

(The statements referred to appear in the appendix.)

Mr. THOMPSON. Our next witness is a representative of the American Road Builders' Association, Mr. Robert Hirschman, a member of the board of directors.

Good morning, Mr. Hirschman.

STATEMENT OF ROBERT HIRSCHMAN, MEMBER, BOARD OF DIRECTORS, AMERICAN ROAD BUILDERS' ASSOCIATION; ACCOMPANIED BY EUGENE B. ROBBINS, ASSISTANT TO EXECUTIVE VICE PRESIDENT

Mr. HIRSCHMAN. Good morning.

Mr. THOMPSON. Are you accompanied by anyone?

Mr. HIRSCHMAN. Yes.

Mr. THOMPSON. If you would identify the gentleman for the record, we would appreciate it.

Mr. HIRSCHMAN. Yes. I am accompanied today by Eugene B. Robbins, who is assistant to the executive vice president of the American Road Builders' Association, and he is also the director of our contractors' division of the American Road Builders.

Mr. THOMPSON. You are welcome indeed.

Mr. ROBBINS. Thank you.

Mr. HIRSCHMAN. Thank you, Mr. Chairman.

Mr. Chairman, and members of the committee: My name is Robert Hirschman. I am president of the H. J. Williams Co., Inc., a heavy and highway contractor from York, Pa., and I am a member of the board of directors of the American Road Builders' Association, a national organization embracing all segments of the highway construction industry. ARBA's membership includes about 5,500 firms and individuals, including highway engineers, professors of highway engineering and students, construction equipment manufacturers, contractors, and producers and suppliers of highway construction materials.

As a matter of policy, our association does not take positions on subjects which are of significant interest only to one segment of the membership. In the case of common situs picketing, the question is one which is of direct interest to contractor members of ARBA. However, in the considered opinion of the ARBA Board of Directors, the enactment of H.R. 100 would have a significant adverse effect on the orderly progress of the national highway program.

Mr. Chairman, we very much appreciate the privilege of appearing before this committee on this subject. We fully realize that the question has been studied and restudied and that the committee has accumulated statements from many, many experts in the field. We hope to conserve the time of the committee today by making this statement as brief as possible.

As has been stated many times, "the law of secondary boycotts is that neutral and innocent bystanders are not to be made victims of industrial strife." The argument is made that there are no neutral or innocent bystanders among the contractors working at a construction site. It is argued that a contractor who joins a joint venture with another contractor or who awards a subcontract to another contractor has ample opportunity to know, well in advance, whether union and nonunion men are going to be drawn together and whether trouble is likely to result from this "mixed marriage."

Because the contractor has the option of avoiding these troublesome situations, it is argued, he must take the responsibility for them when they occur. He must anticipate that strikes and other labor strife will occur if, by his prior actions, he has set the stage for labor disputes.

We do not agree that the highway contractor has this degree of freedom in the selection of subcontractors and other general contractors who may share the jobsite with him.

In particular, the highway contractor is bound by Federal and State laws and regulations which control his actions. The construction of a segment of highway may be divided among two or more prime contractors, all of whom must be selected by competitive bidding. The contractor, at the time he submits his bid, does not know who will share the jobsite with him, nor does he have any control over the labor practices of other contractors.

An example of such situs sharing is the situation in which one contractor is performing grading operations and another contractor is building bridges and other structures, both operations going forward at the same time.

Another characteristic of the highway industry is that projects are often undertaken in remote rural areas, where geographical considerations may limit the prime contractors' choice of subcontractors. If there is a subcontractor already working on another project in the general area, the availability of his equipment and work force may be a compelling factor in the selection. It should be noted that such projects are often located in areas where workers have not been brought into labor unions. We do not believe that it is equitable to permit such a situation to trigger common situs picketing.

One of the major problems of our economy today is inflation. It is felt very strongly by our contractors that the passage of H.R. 100 will help to escalate the wages of the building trades out of propor-

tion to the wages of other workers in the economy. I quote an article from the Wall Street Journal of Tuesday, April 22, 1969:

Construction strikes spread as building unions press hard for big gains.

The annual round of spring bargaining is just getting started. But the Associated General Contractors, a trade group, already counts at least 24 strikes idling over 100,000 workers in 12 states. Among the areas hit: Miami, Kansas City, Detroit, and Baltimore. With some 400,000 construction workers covered by major contracts expiring in 1969, labor experts figure the worst is still to come.

Settlements are running well ahead of 1968, when construction pacts provided an average wage-plus-benefit increase of 8.5 percent a year. The AGC says 1969 settlements are boosting pay about 13.7 percent annually. In Buffalo, building unions won a package that will increase wages and fringes by \$3.35 an hour over 3 years, an annual gain of about 17 percent to over \$9.50 for some unions.

H.R. 100 will have a tendency to create a monopoly for the building trades union by forcing independent unions and nonunion employees out of the construction business. When this occurs the percentage increases will go far beyond the 10-, 15-, and 20-percent raises, which are now being obtained by the building trades.

A further complication is brought about by the determination of the highway construction industry to carry out an aggressive and effective program to insure equal employment opportunity by making on-the-job training available to disadvantaged persons. The American Road Builders Association is involved in such a program in 15 States and has pledged that it will encourage and support such programs wherever we have affiliated State contractor associations.

As a practical matter, such programs must be implemented with the cooperation of the labor unions directly involved. We are encouraged by the progress we have achieved to date with the cooperation of organized labor. But we sincerely believe that common situs picketing would place the training program in jeopardy.

To put it very clearly, we are proposing to put men to work who, in many cases, cannot meet minimum union requirements because of their backgrounds as disadvantaged individuals. We do this because we are convinced of the importance of equal employment opportunity as a national goal.

Again we deeply appreciate the privilege of appearing before this committee. We hope that this very brief presentation will be of some help in your deliberations.

Thank you.

Mr. THOMPSON. Mr. Hirschman, I would like to thank you for a very thoughtful statement. There are parts of it with which I disagree, but you have stated your case, I think, fairly and honestly, from your point of view. I would like to commend you and those cooperating in this effort to employ the disadvantaged.

I have just on an informal basis completed some negotiations in New Jersey for the employment of a considerable number of the disadvantaged in the reconstruction of a ghetto area. Rather than tear it down and build new buildings they are going to refurbish them. In that case, by negotiation with the contractors and the building trades, we were able to arrive at an agreement where the unions have recognized the lack of education of the disadvantaged. The unions are assisting not only in their training, but are working with them in the hope of qualifying them for apprenticeships and for other training. In the meantime, they do have these work opportunities.

Your industry and those involved in this program are to be highly commended.

I thank you very much.

Mr. HIRSCHMAN. Thank you, sir.

Mr. THOMPSON. Our next witness is Mr. Don Mahon, the executive secretary of the National Federation of Independent Unions.

Mr. Mahon, you are welcome indeed this morning.

**STATEMENT OF DON MAHON, EXECUTIVE SECRETARY, NATIONAL
FEDERATION OF INDEPENDENT UNIONS; ACCOMPANIED BY
TRUMAN DAVIS, NATIONAL EXECUTIVE VICE PRESIDENT**

Mr. MAHON. Thank you.

Mr. THOMPSON. And the name of the gentleman accompanying you, please?

Mr. MAHON. I am accompanied by Mr. Truman Davis, who is business manager of the Congress of Independent Unions and also a vice president of the National Federation of Independent Unions.

Mr. THOMPSON. You are welcome, Mr. Davis.

Mr. DAVIS. Thank you.

Mr. MAHON. Mr. Chairman, we appreciate the opportunity to appear in connection with this matter of vital importance to all workers.

My name is Don Mahon. I am national executive secretary of the National Federation of Independent Unions. Accompanying me is Mr. Truman Davis, national executive vice president of our organization.

The National Federal of Independent Unions supports the principles of situs picketing at construction projects incorporated in H.R. 100, 91st Congress, first session, provided that it is amended to include the following specific safeguard:

No activity otherwise authorized by this proviso shall be conducted if an object thereof is to protest in any way the wages, hours, working conditions, or representation of employees employed at a site who are represented by a labor organization except by or with the concurrence of the labor organization representing the employees.

The need for this amendment is based on our experience at construction sites at which we represent employees and whose employment terms are governed by agreements we have negotiated. Because we are not among the oldline building and construction unions, our presence at construction projects as the representative of employees at work there is resented by the oldline unions. To cause our removal from the project, the oldline unions picket the site ostensibly to protest the wages, hours, and working conditions of the employees we represent claiming that they are substandard. The picketing is simply a ruse to bring pressure on the general contractor or subcontractor to compel the ouster of our people from work at the job site. Its purpose is to monopolize the representation of construction employees by the oldline construction unions exclusively.

Our amendment is designed to eliminate this evil. We endorse the principle of situs picketing at a construction project when it is directed to the organization of a nonunion employer or when it furthers the economic demand on an employer pertaining to his employees made by

the union representing those employees. But it is no rightful part of this principle to permit situs picketing by old-line unions who resent other unions representing construction employees and who engage in picketing to drive them and the employees they represent from the project.

If a union is permitted to strike or picket the job site; where members of another recognized or certified union are employed, with the object of forcing the recognized or certified union to recognize any terms not provided in their own agreement, the striking union would be in direct violation of section 7.

This amendment, as proposed in H.R. 100, would give one or more unions—for example, a trades council—and one or more employers—for example, an association of contractors—the right to negotiate a contract. Then the building trades union could picket and/or strike all other small employers or groups of employers on any job in their area even though the employers on the site involved were represented by other unions. In such areas, including rural areas in a several-hundred-mile radius, this would in turn force these people out of business and break down all competition from smaller employers and smaller unions. This would constitute an absolute monopoly in building trades unionism and thus a complete contradiction and violation of the whole intent of the National Labor Relations Act.

Further result of adopting H.R. 100, as now proposed, would not be limited to building sites alone as some may be led to believe. To illustrate, I would like to cite an example: The NLRB conducts an election for a production and maintenance unit in an industrial plant. The election is won by an industrial union which is then certified by the NLRB. The maintenance department of this unit employs various craftsmen, such as carpenters, plumbers, and electricians. Later, the building trades might get slow and work is short in this area for certain crafts. Now, take the case of the carpenters as an illustration. Some carpenters are driving by the plant, where the P. & M. unit is certified; they complain at the next meeting of the carpenters union that other men are doing carpenter's work at the plant. "That's our work and we want it," they declare. So it is decided that they will picket this plant. The carpenter pickets can thus stop deliveries and all other things this amendment in its present form would give them the right to do.

These examples are not hypothetical cases. The result of adopting H.R. 100 in its present form would be absolute monopoly of craft work by the old-line building trades unions.

As a result, it is impossible for union members, other than those in the AFL-CIO trade unions, to work on any job site the AFL-CIO buildings trades choose to monopolize.

At a time when there is so much talk about discrimination H.R. 100 as proposed would actually legalize discriminatory picketing by certain trade unions. For example, in NLRB case No. 14-CC-359 filed against the AFL-CIO Building Trades Council of St. Louis, Mo., during the construction of the Gateway to the West Arch in St. Louis, all unions members belonging to the AFL-CIO Trades Council walked off the job and stopped all work there when black plumbers, represented by the Congress of Independent Unions, appeared on the job site.

The AFL-CIO Trade Union representatives said their members would not work on any job with anyone other than AFL-CIO members.

Following NLRB and Federal court hearings, they were forced back on the job. But, under the terms of H.R. 100 as proposed, their discriminatory action would be legal. There would be no way to get the job going again except by giving the work to the AFL-CIO Trades Unions. The black contractor, who employed members of the Congress of Independent Unions, would be eliminated.

Remember, they do not want these workers as their members, they just want jurisdiction over their work.

And I would like to let the record show that in this particular case the union involved had been certified by the National Labor Relations Board as the bargaining agent. These were union employees under a certified, recognized, and a union contract.

The amendment we propose in connection with H.R. 100 is the safeguard necessary to protect the rights of all parties directly concerned and the public, too.

Mr. THOMPSON. I thank you very much, Mr. Mahon, for your statement and assure you that in its deliberations the subcommittee will take a very careful look at the amendment language which you suggest.

Mr. MAHON. Thank you. I simply wanted to clarify the statement by the previous witness that the employees involved at the St. Louis Arch were members of a union and a certified union, a recognized union, and a union under contract as well as a black contractor.

Mr. THOMPSON. My discussion with Mr. Sherman on the subject related to the discrimination aspects of it.

Mr. MAHON. I just wanted to clarify that point. It was said that they were nonunion employees. These were union employees.

Mr. THOMPSON. I just have one or two questions.

First, what is your total membership, sir, in the Federation of Independent Unions?

Mr. MAHON. Independent, that is, affiliated with us, approximately 100,000.

Mr. THOMPSON. And how many construction workers belong to that federation?

Mr. MAHON. I would have to refer probably to Mr. Davis?

Approximately how many locals?

Mr. DAVIS. I don't really know how many there are in the national federation. I believe that I probably represent a larger group than anybody in the federation in that I have, I guess, about 2,000, maybe something in that area, close to that; that is, trade unions. I would assume that I represent more in the trade union than anybody in the federation, probably.

Mr. THOMPSON. Would it be convenient for you to find for us and let us know how many are construction workers?

Mr. DAVIS. Yes; I would be glad to do that. We don't have many because whenever you have to pick the crumbs up off the floor you don't get many people, you know.

Mr. THOMPSON. Thank you very much.

Mr. MAHON. Thank you.

Mr. THOMPSON. Our next witness is Mr. Gerald S. Ostrowski, manager of public affairs, National Constructors Association.

Good morning, sir.

STATEMENT OF GERALD S. OSTROWSKI, MANAGER OF PUBLIC AFFAIRS, NATIONAL CONSTRUCTORS ASSOCIATION; ACCOMPANIED BY E. D. HOEKSTRA, EXECUTIVE SECRETARY

Mr. OSTROWSKI. Good morning, Mr. Chairman.

My name is Gerald S. Ostrowski, and I am the manager of public affairs. Accompanying me today is Mr. E. D. Hoekstra, who is the executive secretary of the National Constructors Association.

Mr. THOMPSON. Both of you are very welcome.

Mr. OSTROWSKI. Thank you, Mr. Chairman.

At the outset I would like to thank you for the opportunity to appear here this morning and present our views.

I have a prepared statement which I would at the outset like to read into the record.

Mr. THOMPSON. Please proceed.

Mr. OSTROWSKI. The National Constructors Association opposes passage of H.R. 100, as well as bills of similar intent such as H.R. 756, H.R. 1005, H.R. 1084, and H.R. 3092, referred to as the Situs Picketing bill.

The association is composed of 34 nationally and internationally known companies which operate throughout the United States and abroad and which serve a major segment of American industry through the design and erection of large-scale industrial and defense facilities. A directory folder listing the association's membership, officers, and other information is attached. On behalf of its member companies it has negotiated and maintains national agreements with most of the major international unions affiliated with the Building and Construction Trades Department, AFL-CIO.

By the passage of H.R. 100, the association believes that the number and severity of strikes and work stoppages, alarming as they are today, would be vastly increased. In addition, the cost of construction as to both governmental and private industrial developments would rise sharply. This belief stems largely from the fact that on a typically large-scale construction project a number of construction contractors are often employed or engaged in work simultaneously on the same site. In most cases these are prime contractors, many of them having sub-contractors also operating on the site. However, it is not uncommon that one or more of these contractors will have labor policies at variance with those of other contractors. Should one of these contractors encounter a work stoppage occasioned by a dispute with a given union,

the effect thereof would be the disruption of work performed by all contractors. This would be in spite of the fact that these other contractors, because of their existing collective bargaining agreements, had no dispute with any union at the time of the work stoppage. This fact alone should point out basic inequities if not discriminatory features of this proposed legislation.

All construction activity at a common site is not controlled in many cases by one general contractor. While some building projects are constructed under the control of one prime contractor it is the exception rather than the rule on jobs which are complex industrial process type projects and which most vitally affect the national interest. As pointed out above, there may be several prime contractors engaged on what would be construed as a single site in the language of the proposed bill.

National Constructors Association contractors readily and customarily accept responsibility for the acts of their subcontractors and of the consequences of any failure on their part to operate under union agreements. What NCA is objecting to is having its members suffer the consequences of common situs picketing arising from the actions of another contractor with whom our companies would have no relationship and over whom they could exercise no control. The broad, vague, and nonspecific term "joint venturers" is not defined or circumscribed in the bill, but obviously extends beyond the factors of "ownership or control." Thus, the scope of "joint ventures" covered by this bill would be unlimited and subject to a multiplicity of interpretations.

Similarly, the term "at the site of the construction" is so vague that material suppliers, such as sand, gravel, and ready-mix concrete subcontractors, would be subject to secondary boycotts even though their operations and plants are located several miles away from the construction project.

In connection with Government construction contracts mentioned above, it should be noted that the provision for a 10-day waiting period as provided in the current version of the bill is of virtually no value in preventing strikes at the site of Government work. The provision is applicable only to certain kinds of Government projects and it contains no assurances whatsoever that the brief advance notice would lead to avoidance of a threatened strike.

For reasons set forth above the National Constructors Association urges defeat of H.R. 100.

Mr. THOMPSON. I have no comment except to thank you for your testimony and for your point of view with respect to this bill. I assure you on behalf of all the members of the subcommittee, as I assure all of the other witnesses and those other parties interested, that everyone's point of view is going to be given very careful and fair consideration in our subcommittee deliberations.

We do not yet know the outcome. Certainly I do not. And so I can just express the gratitude of the subcommittee to those who have expressed enough interest to prepare statements, such as you have, and to appear. Thank you very much.

Mr. OSTROWSKI. Thank you, Mr. Chairman.

Mr. HOEKSTRA. Thank you.

Mr. THOMPSON. We have visiting with us an observer from El Salvador, Father Jesus Rodriguez, whom we welcome. He is from the Jose Simeon Canas University and is the director of the Job Training Center. He is professor of sociology at the university.

Thank you very much for being with us this morning.

The subcommittee will adjourn. Hearings will resume on the 29th of April in room 2257 at 9:45 a.m.

(Whereupon, at 11:05 a.m., the subcommittee recessed, to reconvene at 9:45 a.m., Tuesday, April 29, 1969.)

SITUS PICKETING

TUESDAY, APRIL 29, 1969

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. Frank Thompson, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Thompson, Ashbrook, Reid, Dellenback, Eshleman, Hansen, and Ruth.

Staff members present: Peter W. Tredick, counsel; and Jeunesse M. Beaumont, clerk.

Mr. THOMPSON. The subcommittee will be in order.

Our first witness is Mr. William E. Naumann, chairman of the Congressional Relations Committee of the Associated General Contractors of America. I note also that Mr. R. B. Russell of the Ruscon Construction Co. of Charleston, S.C., representing the Associated General Contractors of America, is here.

I wonder if you two gentlemen would like to appear together.

Mr. RUSSELL. Mr. Chairman, we prefer a separate audience, if we may have it, sir.

Mr. THOMPSON. Very well.

Is Mr. Naumann here?

Mr. NAUMANN. Yes, sir.

Mr. THOMPSON. Are you ready, sir?

Mr. NAUMANN. Yes, Mr. Chairman.

Mr. THOMPSON. We are glad to welcome you this morning. We have your statement. You may read it, summarize it, or proceed as you wish.

Mr. NAUMANN. Thank you, Mr. Chairman. I believe I would prefer to read the statement.

STATEMENT OF WILLIAM E. NAUMANN, CHAIRMAN, CONGRESSIONAL RELATIONS COMMITTEE, ASSOCIATED GENERAL CONTRACTORS OF AMERICA; ACCOMPANIED BY ARTHUR F. HINTZE, DIRECTOR, GOVERNMENT RELATIONS FOR THE ASSOCIATED GENERAL CONTRACTORS NATIONAL OFFICE, WASHINGTON, D.C.

Mr. NAUMANN. I would like, before I begin, to introduce my colleague on my right, Mr. Arthur F. Hintze, director of government relations for the Associated General Contractors national office in Washington.

Let me preface my statement with the remark that we are pleased that we have an opportunity to be heard in connection with this very important legislation, and after this many tries we would hope one day that we do not have to testify against H.R. 100.

Mr. THOMPSON. I don't think you will have to after this year, sir. I think we will pass it.

Mr. NAUMANN. If it please the chairman, I will proceed with my statement.

My name is William E. Naumann. I am chairman of the legislative committee of the Associated General Contractors of America, a trade association of over 8,900 of the Nation's leading general contractors which perform the greater part of all highway, heavy engineering, and building construction in the United States each year. I also serve the AGC as a member of its executive and labor committees. The statements which I will make here are in complete accord with long established policies of the AGC.

We appreciate the opportunity to present our testimony on H.R. 100, a bill which amends section 8(b)(4)(B) of the Taft-Hartley Act, legalizing secondary boycotts in the construction industry. Our opposition to such legislative proposals were amply set forth in testimony before the House Labor Subcommittee in June 1960, in June 1965, and in April 1967. So my purpose today will be to summarize and bring them up to date.

We are opposed to H.R. 100 and similar proposals for the following reasons:

From the standpoint of the public interest, the change proposed in H.R. 100 is, on the one hand, unnecessary, and on the other, detrimental. It would cause chaos and inefficiency in the construction industry.

The right of any construction union to picket any employer with whom it has a lawful dispute on the site of a multiemployer construction site is guaranteed expressly in section 8(b)(4)(B). This states that nothing in the section "shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." The word "primary," of course, means involving the employer with whom the union has a dispute.

The rules of fair picketing have been recognized as a reasonable limitation on common site picketing even before the *Denver Building Trades* case was decided by the Supreme Court. The rules of fair picketing have been consistently upheld by the National Labor Relations Board and every court in the land to the present time. This rule applies to all unions. A construction union may be critical of the rules of fair picketing today, but may invoke its protection tomorrow.

The rules of fair picketing simply require that the picket sign indicate the employer against whom the picketing is directed; picketing must be conducted as close as reasonably possible to the place where the employer in the dispute is engaged; the dispute itself be located on the site—rather than in a plant or warehouse somewhere else—and, finally, the employer in the dispute be engaged in his normal business at the site at the time the picketing is taking place. What is so bad about that? I do not recall ever hearing any reasonable criticism against the rules of fair picketing, as I have described them.

Under the present law, a union, with a bona fide dispute with an employer at a construction site, can strike the primary employer in-

volved, subject to reasonable limitations which afford some measure of protection to innocent employees and employers not involved. However, this protection from a practical point of view, is sometimes illusory rather than real, but at least it affords some protection.

Even under the present criteria for picketing a construction site, it is not easy to ascertain the reason for the picketing. More common than not, it takes weeks of legal maneuvering, threats of legal suits, and NLRB proceedings to determine if the picketing is a secondary boycott and if the picketing is legal. If H.R. 100 is enacted, these safeguards would be severely weakened.

H.R. 100 would wipe out the rules of fair picketing, and in their place institute rules of unfair picketing. The proposal would give the construction unions the right to picket construction sites without indicating against whom it is directed, without any meaningful location of the picketing with respect to where the employer in the dispute is engaged on the construction site, or whether he is in fact engaged on the site at the time of the picketing, or whether the dispute itself is located on the site. H.R. 100 would open the door to indiscriminate picketing and bring chaos to construction sites across the country—with some limits as to chaos that could be brought to defense facilities.

Construction unions already have many special privileges and powers not accorded to other unions or other segments of society. These include the following:

Construction unions have a special exemption from the ban on "hot cargo" agreements, which are for them enforceable in the courts.

Construction unions have a special exemption to have compulsory union shop agreements before their men are even present on the construction project, except in States having right-to-work laws.

Construction unions have a special exemption to operate exclusive hiring hall systems.

The NLRB and the Supreme Court has told these unions they can block the use of prefabricated products on construction sites to preserve customary handcraft work, or to recapture work their members used to do but have all but lost.

Construction unions also have a great power at the bargaining table, enabling them in recent years to lead the inflation "parade." The construction industry at this moment is having many strikes over exorbitant wage demands. This year a discernible hard-line pattern is emerging in the form of demands for 20- and 30-percent wage increases per year, with the average wage, based on unimpeachable Labor Department sources, now reaching \$5.85 an hour. This trend is documented in a statement by Carl M. Halvorson, president of the Associated General Contractors, in attachment A. This is further explained in a recent editorial from U.S. News & World Report, attachment B.

How responsibly construction unions are exercising their great powers today should be looked into before more time is spent in attempts to add more power to what they already have.

We have noted suggestions to modify H.R. 100 by adding protections and safeguards to lessen the damaging effects of the bill. These suggestions, however well intentioned, simply attempt to water down the harm that results from something that is basically bad to

begin with; namely, the secondary boycott. If something like situs picketing is bad in principle, let us oppose it with all our effort instead of figuring ways to make it more palatable.

We think a secondary boycott is bad morally and legally and we are not about to figure out ways to make it legal and at the same time reduce the damage that flows from something so inherently wrong. Instead we should be engaged in meaningful efforts to stop the dreadful effects of inflation which are the direct results of local construction unions demands, strikes and settlements over the past several years and which at this very moment threaten the welfare and security of our country.

With over 20 major construction strikes now underway throughout the land wherein the local unions are demanding increases of 20 to 30 percent in 1 year or 60 to 90 percent over 3 years, this industry and this Nation cannot survive if this continues unabated. Is giving these same unions more power to strike and picket the answer? We think not. We are all in for a greater shock as more labor agreements expire tomorrow and 30 days from now.

When will the public speak out and say they have had enough of this economic abuse at the hands of those who control the manpower supply in the building of necessary housing, hospitals, roads, and flood control projects.

Other industries are becoming alarmed at the runaway labor costs and lack of productivity in the construction industry. I refer to a recent report of the NAM which I would like permission to insert in the record of these hearings at the conclusion of my testimony. Also, an outstanding article in the December issue of *Fortune* magazine.

Rather than add to the already considerable power of the building trades unions by more concessions and picketing rights, may I submit that what we really need is more restraint through legislation and through the leadership of the international union officials who must be as concerned as we are over the current hellbent course of inflationary strikes, demands and settlements of the local unions.

Rather, let us get on with the business of restoring some of the rights of the public to a fair shake on the cost of construction through the use of prefabricated parts or components. In other words, reverse the decision in the *Philadelphia Door* case, as is proposed by Senate bill 1532.

Let us put some controls on the use of the union hiring halls which have been and are being used to discriminate against applicants.

Let us shorten and improve our training programs so that all of those who want a job can be trained to become useful and productive citizens. These are the things we should be thinking about and working together on, for the good of our industry and our common welfare.

Mr. Chairman, I would like at this point to request the addition for the record of the article from the NAM publication entitled, "Chaos in the Construction Industry."

Mr. THOMPSON. Without objection, the remarks of Mr. Halvorson, the other addenda to the statement, including the article just referred to, and the AGC's 5-point legislative proposal will be made part of the record at this point.

(The documents referred to are as follows:)

REMARKS BY CARL M. HALVORSON, PRESIDENT, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, APRIL 21, 1969, AT THE NATIONAL PRESS CLUB, WASHINGTON, D.C.

Based on what we have seen in the past three weeks and the reports from our chapters throughout the United States, it appears that the excessively high wage settlements from 1967 and 1968 were but a prelude of what can happen in construction wage negotiations this year.

A clearly discernible hard-line national pattern is emerging in the form of demands of 20% to 30% wage increases per year. Construction rates now average \$5.27 plus 58¢ in fringes equaling \$5.85 per hour according to the United States Bureau of Labor Statistics.

We are not claiming that this is a conspiracy among the local building trades unions throughout the country in demanding these large increases each conforming to the general pattern, but the fact remains that this is the way it is.

Already there are twenty-four major contract renewal strikes taking place in twelve states involving one hundred and ten thousand (110,000) workmen, even though most contracts to be negotiated this year do not expire until the first of May and the first of June. In most of these current strike situations the demands vary from 20% to more than 50% increase. Most of these strikes began on April 1 and are now entering their fourth week.

One of the major causes of instability in this industry is that over the past few years the construction industry has moved from one of underemployment to one of full employment in the skilled trades. This transition demonstrates that what is viable under conditions of unemployment is explosively untenable under conditions of full employment.

We have labor laws and government policy developed at a time when there was great unemployment. Now, the situation is reversed with critical shortages in skilled manpower resulting in breakthrough wage settlements. Thus you have all the ingredients for run-away wage inflation. Today the construction industry is in the grip of such self-destructive inflationary forces.

This industry can still be saved from the effects of inflation if management and labor, with government cooperation, move promptly to initiate corrective action in the following areas:

- (1) Enter into a national stabilization agreement containing a no-strike no lock-out pledge to the government with provisions for the arbitration of wage disputes.

- (2) All government construction contracts should contain provisions calling for arbitration of wage disputes in the renewal of applicable labor agreements.

- (3) Improve efficiency in the use of construction manpower whereby skilled manpower is used only to perform skilled work. This move alone could immediately increase the available skilled manpower by more than 20%.

- (4) Re-evaluate, and revoke where applicable, those government policies and laws which are geared to unemployment and underemployment of manpower and replace these with modern approaches which recognize the current critical shortages of skilled manpower in our industry.

- (5) Relax present Labor Department restrictions on apprenticeship training, thereby encouraging accelerated training and put greater emphasis on the recruitment and training of minority workers.

[U.S. News & World Report, May 5, 1969]

LABOR WEEK—MORE PRESSURE TO CURB WAGE COSTS IN BUILDING

Record pay demands, backed up by strikes, are being pushed by plumbers, carpenters, masons, other unionized workers in the construction industry.

Builders say it's time to call a halt. One plan: Let arbitrators fix the size of wage increases.

Could 1969 be the year when something is done to halt big wage increases in the construction industry?

With pay of plumbers going as high as \$10.65 an hour—more than \$21,000 a year—employers think the time has come to slow up the spiral.

One idea proposed: Unions should ban strikes over wage demands. They and the contractors should let an arbitrator decide on the size of the raises.

Odds now appear to be against any solution of that sort, but employers in and out of the construction industry are urging that this upward trend on building-trades wages be halted, or at least slowed a bit.

Every spring, a wave of strikes hits the building industry. This year, however, the contractors say that demands and settlements are breaking records.

Hard-line demands. With 1969 talks just beginning, this is the trend reported by employers:

A "hard-line national pattern" of demands is evident, with unions seeking raises of 20 to 30 percent a year in wage and "fringe" increases.

Some 24 major strikes were reported under way in 12 States, involving 110,000 workers, with demands running from 20 percent to more than 50 percent a year. Including smaller walkouts, employers estimated that 2 or 3 billion dollars in construction was tied up.

In 50 settlements reached so far, the average pay boost is 13.7 percent annually—around 67 cents an hour.

A new contract will give Philadelphia plumbers more than \$19,000 a year by May, 1971—at \$9.76 per hour. And a San Francisco plumber is due to get \$10.65 an hour by 1972, or more than \$21,000 a year.

Government figures indicate that construction wage rates average \$5.27 an hour plus 58 cents in "fringes," or a gross of \$5.85 per hour.

That picture was presented by Carl M. Halvorson, president of the Associated General Contractors of America, on April 21. Wage settlements, he said, are substantially above the 1968 level and almost twice the 1967 figure.

The accompanying table shows some of the larger work stoppages cited by the association. As an example, gross pay will rise to \$9.30 per hour for carpenters in Bridgeport, Conn., if the union demands are granted.

IF STRIKERS WIN DEMANDS—HOW CONSTRUCTION PAY WILL JUMP

[Strikers' demands in work stoppages typical of those tying up \$2,000,000,000 to \$3,000,000,000 in construction projects around the nation]

Area	Unions on strike	Before-strike pay per hour including fringe benefits	Hourly raise demanded	New pay per hour if demands are met
Kansas City, Mo.	Ironworkers	\$5.17	\$3.50 in 1 year	\$8.67
Bridgeport, Conn.	Carpenters	5.59	\$3.71 in 3 years	9.30
Miami, Fla.	Bricklayers	5.52	\$3 in 3 years	8.52
	Laborers	3.65	\$2.50 in 3 years	6.15
Tampa, Fla.	Carpenters	4.35	\$2.40 in 3 years	6.75
Houston, Tex.	Ironworkers	5.26	\$1.50 in 2 years	6.76
	Roofers	4.46	\$2.25 in 3 years	6.71
Springfield, Mass.	Operating engineers	5.95	\$2.25 in 3 years	8.20
Pittsfield, Mass.	Laborers	4.16	\$2.30 in 3 years	6.46
Lincoln, Nebr.	Bricklayers	4.93	\$2.05 in 3 years	6.98
	Ironworkers	4.55	\$1.98 in 3 years	6.53
Monroe, La.	Bricklayers	5.00	\$1.65 in 2 years	6.65
Detroit, Mich.	Laborers	4.88	\$1.15 in 1 year	6.03

Source: Associated General Contractors of America.

Numerous examples of completed settlements also were offered by the association. They included:

Increases of \$3.35 an hour over three years for Buffalo bricklayers, giving \$9.67 an hour in 1972.

A boost of \$1.45 per hour over three years for cement masons in Denver, who have been earning \$5. And \$1.50 an hour in three years for operating engineers in Colorado, on top of their \$5 rate.

As for demands still in negotiation, the contractors reported that operating engineers want a boost of 100 per cent in Peoria, Ill.

Other requests listed included: a raise of \$5.65 an hour over three years for carpenters in North Adams, Mass.; \$3.50 an hour more in one year for ironworkers of Kansas City; \$3.65 an hour over two years for Philadelphia carpenters.

In Michigan, officials said, Flint laborers want an increase of \$1.70 an hour in a single year; painters in Traverse City ask for \$3.15 in two years; Lansing laborers seek \$4 an hour in two years.

Relief sought.—Because of such demands, the contractors have decided that drastic remedies are needed, immediately. The Associated General Contractors, Mr. Halvorson said, suggested to President Nixon and to the unions these actions:

1. Unions and employers should sign a "national stabilization agreement" barring strikes or lockouts in construction and providing for binding arbitration of all wage disputes.
2. All construction contracts issued by the Government should contain clauses for binding arbitration of wage disputes in their parts of the industry.
3. Skilled manpower should be used only for skilled work. It was estimated this alone would bring a rise of 20 per cent in available skilled labor by relieving skilled workers from unskilled tasks.
4. Government policies and laws "which are geared to unemployment" periods and recessions should be revoked or revamped.

5. Labor Department "restrictions" on apprentice training should be relaxed. No replies had been received from the Government or labor, Mr. Halvorson said.

"Chaos" in construction.—Another industry group on April 15 issued its recommendations on ending the "chaos in the construction industry." A report appealing for a curb on building-trades wages came from the industrial-relations committee of the National Association of Manufacturers. One of its proposals urged industrial firms to back up contractors' associations that resist the demands for big raises.

Another committee, set up by the Chamber of Commerce of the United States, is also seeking to slow up the wage spiral in building.

Whether any of the employer moves will succeed remains in doubt. The unions are out to get all the money they can while skilled craftsmen are in short supply and demand is high.

AGC's FIVE-POINT LEGISLATIVE PROPOSAL

The Associated General Contractors at its Convention last March, adopted a five-point legislative program on labor reforms involving jurisdictional disputes, prefabrication, featherbedding, hiring halls, and binding agreements. These are described briefly below and the precise language is available:

1. JURISDICTIONAL DISPUTES

AGC would provide that whenever parties to a jurisdictional dispute have agreed to voluntary adjustments for such a dispute, that any person whose interests are affected by the strike may petition a Federal District Court for an injunction, to enable the voluntary machinery to function as intended without a work stoppage. While such an injunction remains in effect however, the NLRB General Counsel would process the case to a logical conclusion, with the voluntary machinery being allowed to resolve the dispute if possible before final NLRB sanctions are applied.

2. PREFABRICATION

AGC would amend 8(b) (4) (B), the secondary boycott provisions, and Section 8(e), the hot cargo provisions to make it clear that both sections would be available to remedy strikes and picketing to restrict the use of products and materials by the Building Trades Unions.

8(b) (4) (B) would be amended by stating that any union conduct to force a person to cease using or handling the products of another party shall not, in any circumstances, constitute a primary dispute regardless of the existence or legality of a labor agreement with respect to it.

Section 8(e) would be amended to say that it would be an unfair labor practice for a union or company to enter into an agreement to cease or refrain from using or handling the product of another company regardless of whether the purpose of the contract or agreement relating to any product is to retain or recover work for employees of that union.

3. FEATHERBEDDING

AGC would modify the featherbedding clause (it is now useless) so that it will rule out union demands for services not desired or required by the employer including those of a standby nature not desired or required by the employer.

4. HIRING HALLS

AGC would make it an unfair labor practice for a union to maintain or operate a hiring hall or any referral arrangement in a manner which discriminates against applicants for employment in violation of any law or Executive Order of the United States and it would also provide that contractors should not be responsible for the unions maintenance and operation of these arrangements.

AGC would also provide that hiring halls and other referral arrangements should not be mandatory subjects of bargaining but that they should be permissible and strikes and picketing to obtain them ruled out.

5. BINDING AGREEMENTS

AGC would modify the bargaining-in-good-faith provision in Section 8(d) to require both parties to bargain in good faith including to make, modify and accept bargaining proposals. This provision is intended to rule out the practice of having the rank-and-file refuse to ratify agreements which have been negotiated for their representatives.

Chaos in the

Construction Industry

Analysis and Recommendations

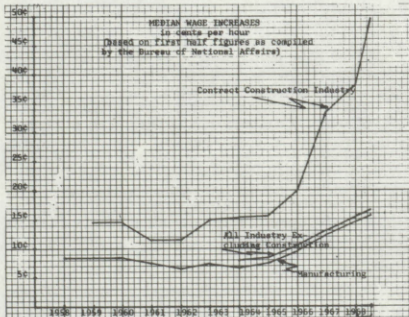
From several obvious standpoints the recent labor relations history of the construction industry is of vital concern to industry. The NAM Industrial Relations Committee delegated to a select group the task of preparing a document on the situation and possible avenues for industry action. That document is published herewith.—EDITOR

Introduction

Labor conditions in the \$90 billion construction industry have reached proportions which demand the urgent attention of both the private and public sectors. Aggravated by highly inflationary contract settlements, excessive work stoppages, and stifling work practices, the labor problems in this industry present a dramatic threat to the national economy as well as to industry in general.

The urgency of coming to grips with these problems is vital. Their solution requires the particular concern and active support of top management in business and industry.

As demonstrated by the graph, wage increases in the construction industry have been accelerating at an alarming rate, far outpacing wage increases in other industries.

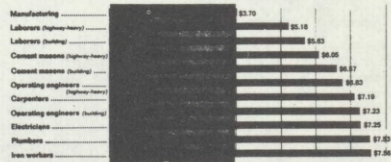


Contract settlements providing for increases ranging from 15 percent up to 30 percent annually have become significantly more frequent. Examination of one exceptionally troublesome area in a heavy construction state—Detroit—reveals that rates (including fringe benefits) for construction workers by mid-1969 will range from \$5.65 an hour for laborers (18.4 percent increase over prior agreement) to \$8.50 an hour for electricians (33.6 percent increase). Those settlements climaxed a strike in the Spring of 1968 which halted construction for 85 days in the Detroit area.

To cite another extreme, Dayton, Ohio bricklayers won a 72 percent pay raise over a four year period—capping a 73-

day work stoppage and increasing their hourly pay to \$9.75.

To the cost-conscious, budget-minded comptroller whose firm may have a plant-expansion program in progress, the full impact of this situation may be viewed in clearer perspective by studying the chart.* It compares the average hourly wage rates and fringe benefits that will take effect in December, 1969 for building-trade groups in seven major Ohio cities with the average manufacturing wage rate and fringe benefits in 1969 (assuming a 5 percent increase).



Productivity affords no justification for such settlements. To the contrary, while the private non-farm economy experienced a 2.9 percent annual increase in productivity from 1959 to 1966, the construction industry experienced a .3 percent annual decrease in productivity during the same period.

The sharp impact of construction industry costs is not confined to industrial building. The nation is entering a decade of unprecedented demand for new and rehabilitated dwellings (estimated at 26 million units) which will require additional schools, hospitals, and expanded public transportation and other supporting facilities. Thus, the continued wage-price spiral in the building trades could price a community out of the market for essential public services.

Government officials have continually warned of the inflationary consequences emanating from the construction industry. In 1968, William H. Chartener, Assistant Secretary of Commerce for Economic Affairs, stated that:

"Wage demands being advanced by construction unions in widely scattered parts of the country constitute one of the most serious challenges to our efforts to slow down the advance of inflation in the American economy."

Supporting that sentiment, the President's Cabinet Committee on Wage and Price Stability stated in 1968 that:

"Wage-price developments in the important construction sector spread inflation throughout the economy by raising costs elsewhere and by intensifying wage demands in other industries."

The Committee continued by warning that "this year's [1968] developments in construction could set back the goal of price stability immeasurably."

In light of the disappointing economic indicators and the

* Reprinted from "The Unchecked Power of the Building Trades," FOR-TUNE, December, 1968.

continued expressions of concern by government and business officials during the first quarter of 1969, the conclusion that inflation has not been checked is amply justified. As a result, the inflationary conditions in the construction industry present the industrial community with a serious challenge. To meet this challenge, and to satisfy its obligation to the nation, industry in general must assume a leadership role.

The following analysis seeks to identify the key problems, to locate the areas where a united and resolute effort on the part of industry must be made, and to recommend specific proposals respecting that effort.

Background of the Problem

The problems which have given rise to the current situation in the construction industry are numerous, but they are neither novel nor difficult to identify. Their origin and continued existence are the responsibility of all connected with that industry, including federal, state, and local governments, and project owners and developers.

The problems stem primarily from one source—the excessive, collective economic strength of the construction unions and the reciprocal lack of bargaining power of contractors and contractor associations. However, for the purpose of clarity, the subject can best be discussed when categorized into the following broad areas.

I. Contract Negotiation

Essentially, the disruptive labor conditions in the construction industry are merely symptoms of the real problem—the imbalance at the bargaining table. Construction management cannot generate sufficient bargaining strength because of the traditional manner of negotiating an agreement.

Generally, a multiplicity of trade associations (some of which have conflicting interests), or merely representatives of local contractors which are not members of an association, bargain for management. On the opposite side of the bargaining table are the powerful and united craft unions, each autonomous in character but united in objective and supported by the international unions.

Contributing to this imbalance in bargaining power are the following factors:

1. The limited organization, undercapitalization, and consequent inability to suffer a strike or lockout of any duration by most of the nation's approximately 870,000 contractors.
2. The lack of labor relations experience and expertise of many construction industry negotiators, and the absence of adequate preparation in many cases.
3. The frequent failure of owners to support contractors and their associations during contract negotiations and negotiation strikes. In many instances, the owners actually undermine the bargaining position of the contractors by their insistence that projects not be delayed by contract negotiation problems.
4. The splintering of negotiations (a) by the large number of craft unions with which each association or group of contractor representatives must bargain, or (b) due to the fact that each craft union may negotiate separately with a number of contractors in any one geographic area.
5. The presence of "national agreement" contractors in the immediate locality which continue construction during local strikes or lockouts and employ the craftsmen who are on strike or involved in the lockout.
6. The lack of incentive to hold down labor costs where there is a cost-plus basis of operation.
7. The compromising attitude of some contractors who mistakenly conclude that because their competition must operate under the same conditions, there is little reason to resist excessive contract demands.
8. The variation of labor contract dates (usually expiring in the critical Spring or Summer months) which permit whipsaw tactics by the unions.
9. The availability of work, not necessarily with "national agreement" contractors, in neighboring areas for striking workers or those involved in a lockout.

As a result of this imbalance in bargaining power, contract provisions have multiplied which are clearly detrimental to efficient operations and extremely costly, which impede the introduction of modern techniques and materials, and which further enhance the strength of the craft unions.

II. Administration: Contract and Project

The second problem area involves the administration of (a) the labor agreement and (b) the work and personnel activities at the job site.

With respect to contract administration, the union representative often expands upon the restrictive practices contained in the labor agreement by the unreasonable and totally unintended application of such provisions. Frequently, this is compounded by management's improper administration of the labor agreement and its failure to resist, or its actual concurrence with, such misapplication. Examples of these practices include:

1. Work preservation—the requirement that all work previously performed by the bargaining unit will continue to be handled by that unit, notwithstanding the availability of new techniques and materials.
2. Work quotas—the establishment of a maximum production figure which may not be exceeded without penalty of fine or other censure.
3. Minimum work crews—the establishment of a fixed number and type of craftsmen required to handle a specific job, often under the guise of safety considerations.
4. Apprenticeship ratios—the establishment of low ratios of apprentices to journeymen.
5. Craft jurisdictional definitions—the specific delineation of duties for each craft at a job site and the strict enforcement thereof.
6. Low productivity or slowdowns—the adoption of unnecessary and inefficient work practices under the guise of alleged compliance with all safety rules and regulations, operating instructions, and maintenance requirements (a) during a union dispute with management, or (b) frequently in an attempt to "stretch" work.
7. Scheduled overtime—the refusal by business agents and/or craftsmen to man a job that is not scheduled on a regular overtime basis. This tactic is often employed to restrict the supply of skilled craftsmen, thereby helping to create an artificial manpower shortage. Unfortunately, some employers have contributed to this condition by their unreasonable use of overtime, which has fostered the belief that overtime is part of the regular work week.
8. Bonus payments—the payment of (a) wage rates in excess of the contract provisions, (b) "show up" time when not required, and (c) excessive travel allowance or subsistence. Often, these "bonus" payments are made as an inducement to retain skilled craftsmen; however, while such a motive is understandable, a costly and unnecessary precedent is established for the construction industry.
9. Waiving the grievance machinery—the failure to invoke the procedures provided in the labor agreement when management has a valid grievance, such as a work stop-

page. Again, while the motive behind such failure is understandable (i.e., that the prompt resumption of work is more essential than establishing a deterrent to further work stoppages), the precedent created is adverse to the long-term interests of the industry.

In the area of project administration (as distinguished from administration of the labor agreement), the following are examples of practices which management has too often countenanced:

1. Permitting workers to begin late and to "pick-up" early, resulting in an actual work day of less than eight hours, but with eight hours pay.
2. Limited production standards, often unilaterally set by the union, which are unrelated to actual production capacity and/or general practices.
3. Tolerating excessive absenteeism and tardiness (which also contributes to the total manpower problem).
4. Permitting so-called area practices respecting work at the job site which are not part of the labor agreement.

III. Manpower

A shortage of available skilled workers is often cited as a major cause of the excessive contract settlements. But a close examination will reveal that this deficiency in manpower has been artificially created and is self-perpetuating, caused largely by the restrictive hiring and work practices and by the archaic apprenticeship systems of the unions.

Unrealistic requirements imposed for entry into the union (e.g., that the applicant must be related to a union member), the discriminatory practice of issuing work permits rather than membership cards, and the unreasonably long apprenticeship training programs have retarded the growth of skilled craftsmen. These practices and conditions are almost universally recognized, and they have met with the criticism and condemnation of many government and business officials and a number of national labor leaders.

Other factors involved in the manpower problem, some of which have compounded the shortage of skilled workers, are:

1. The frequent abdication by construction management to unions of most aspects of the personnel function, including the hiring, assigning and training of employees, and the administration of benefit plans and programs.
2. The forfeiture by many contractors of their responsibility to supervise the work force. The unions in such instances not only choose the foremen and other supervisory personnel but also require that they be union members.
3. Restrictive, union-imposed apprenticeship ratios, and the failure of some contractors to utilize authorizations.
4. The failure to coordinate the scheduling of construction projects with respect to geographic area, time and the type of craftsmen required.
5. The absence of effective means of minimizing absenteeism and tardiness.
6. The union acting as the only constant institution in an industry where job mobility is inherent because of the absence of a fixed location of work, thereby attaching the workers to the union rather than to the employer.
7. The wasteful practice, created by crafts unions, of reserving work in such a way that a great amount of unskilled work is performed by skilled craftsmen.

IV. Government

Federal, state and local legislation, as well as interpretations of the labor laws by the National Labor Relations Board (NLRB) and the courts, comprise the fourth category of problems. Also included in this area is the failure of government, particularly at the federal level, to act in a business-

like manner with respect to its construction expenditures.

The development of labor-management legislation in the United States essentially began during the Depression years with the enactment of the Wagner Act (National Labor Relations Act), which was designed to guarantee employees the right to self-organization for the purpose of negotiating collectively. However, it failed to guarantee the right to refrain from such activity, it prohibited only employer unfair labor practices, and it did not deal with unfair practices by labor. As such, it was a one-sided statute, a problem compounded in recent years by numerous NLRB decisions.

After years of public and Congressional dissatisfaction, Congress in 1947 enacted the Taft-Hartley Act (Labor Management Relations Act) to redress the imbalance which flowed not only from the Wagner Act but from twelve years of its administration. In passing Taft-Hartley, Congress apparently had hoped to restore equity to labor-management relations and to guarantee the basic rights of employees (including the right to join, or not to join, a labor organization). However, Congressional intent was largely frustrated by subsequent NLRB decisions and therefore, after seemingly endless complaints and protracted Congressional hearings, Congress passed the Landrum-Griffin Act in 1959 to curtail the growing instances of union abuses.

Notwithstanding this history, since 1962 the NLRB has nullified many of the restraints on union power imposed by Taft-Hartley and Landrum-Griffin, and court decisions have set aside others. Employees are now subject to fines or levies for exercising rights guaranteed by Taft-Hartley, as amended, and by their own labor agreements. The NLRB has created confusion respecting common situs picketing and it causes crucial delays in issuing complaints and seeking injunctions against such illegal activities. The U.S. Supreme Court decisions in the *National Woodwork and Houston Insulation Contractors* cases have upheld the product or secondary boycott and have restricted the use of cost-saving methods and materials, thereby further intensifying the strength of the already powerful confederation of building trade unions.

The Davis-Bacon Act was enacted in 1931 and provides that the minimum wages (including contributions to benefit plans) to be paid laborers and mechanics on federally-purchased construction "shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes" of workers within a specific geographic area. However, the Act has evolved into a device which encourages excessively high wage rates and discourages innovative non-union contractors and forces them to pay union wages. Its provisions have been stretched so that the union rate and the prevailing rate are now synonymous.

On the local level, building codes foster featherbedding practices that cannot be negotiated at the bargaining table and that further inhibit the use of new materials and techniques. Licensing laws exist which can be administered in a manner that limit the labor market to suit union desires and increase union power by eliminating potential non-union employees from working in the trade.

Lastly, federal and state governments have granted surprising immunity to the unreasonable use of the collective, economic power of the construction unions. Whereas the federal government has in the past exhibited little restraint in exerting pressures against steel and other price increases, it has exercised only slight influence on construction unions to limit excessive wage demands during contract negotiations. This omission is unfortunate in light of the large portion of total construction expenditures which the federal government annually incurs (approximately one-third of the total). While government officials have often expressed concern about the inflationary problems, effective action has been negligible.

Recommendations

The labor conditions that are confronting the construction industry and causing serious economic disruptions must be corrected in order to protect the public interest, to sustain a healthy growth of our national economy, and to support industrial expansion in general. These objectives can be achieved only if realistic solutions are developed and adopted by the business community, with the proper support of federal, state, and local governments in their dual capacities as construction purchasers and as regulatory authorities.

To have a durable effect, such solutions must aim at achieving a more equitable balance in the collective bargaining process. That can be realized only with the support and active cooperation of top management in companies with an interest in the construction industry. Through their united effort, the following recommendations can be effectuated:

1. *Strengthen the bargaining position of contractors through the active support of local contractors and their associations by other segments of industry.*

In order to alleviate the inflationary conditions that are confronting the construction industry today, the industrial community, which is one of the largest single purchasers of construction and which derives significant revenues from the manufacture and supply of construction equipment and material, must actively support and cooperate with contractors and their associations during contract negotiations.

In this endeavor, industry in general must join in a united effort to strengthen the bargaining position of construction management. A strengthening of the bargaining picture will afford the industrial community protection from the serious and direct effects of inflationary settlements in the construction industry—i.e., higher construction costs for current and planned projects, and the "spill-over" effect of these settlements on industrial workers. Specifically, this can be accomplished in the following manner:

- a) Project owners and developers, together with other contractors and contractor associations, should provide the necessary staff assistance to contractors and their associations which lack adequate labor relations experience or expertise.
 - b) Project owners and developers should facilitate a favorable contract settlement by not insisting that work at a struck facility be recommenced at the cost of meeting unreasonable union demands. In the case of contractors operating under a "national agreement," project owners should not permit work to continue that requires the use of a particular craft which is involved in an economic strike or lockout during local craft negotiations.
 - c) Project owners and developers should maintain close relations with local contractor associations during labor negotiations in the area and provide effective support and assistance in arriving at reasonable settlements.
2. *Increase cooperation among project owners, developers and contractors with respect to (A) continuing effective administration of the labor agreement, (B) manpower problems, and (C) scheduling of reasonable commencement and completion dates.*

In addition to support given during contract negotiations, owners and developers should engage in cooperative efforts with contractors and their associations to insure the maximum effective administration of the labor agreement and to eliminate detrimental job conditions and practices unconnected with the agreement. Such cooperation should exist in the following areas:

- a) Project owners and developers should require, by

contract specifications, that they be kept fully informed of the labor relations and manpower problems of their contractors, that they be permitted to participate in decisions affecting the administration of labor agreements, and that strict adherence to the agreements be maintained. However, extreme care must be exercised by the owner's representative so that he does not force an improper action on the part of the contractor which would in effect be a violation of the labor agreement. Further, the contractors labor relations competence should be a criteria which is considered by owners in the selection process.

- b) Project owners and developers should insist that overtime work not be scheduled on a regular basis, and should assist their contractors in eliminating overtime except in emergencies. In every case where it is practical, invitations to bid should specify that bids are to be on a 40-hour basis (in certain localities and with certain crafts, the bid basis might even be a lower number of hours in order to eliminate overtime).
- c) Project owners and developers in a particular locality should cooperate with contractors and among themselves in the scheduling of reasonable commencement and completion dates for projects within that area. Such concerted effort would aid in alleviating the manpower shortage and pressure for overtime work.
- d) Project owners and developers should require that their contractors administer the construction jobs in an efficient and orderly manner, and should assist in maintaining such an operation.
3. *Develop a program designed to revise or repeal certain labor legislation, particularly the Taft-Hartley and Davis-Bacon Acts, and state and local building codes and licensing laws.*

Major revisions are necessary in the Taft-Hartley Act, including the following:

- a) Amendment of Section 8(b)(4)(B) to attach a major qualification to the proviso that excludes primary strikes and picketing from the prohibitions of this section, and specifically designed to overrule the decision in *National Woodwork, Houston Insulation Contractors*, and similar "work preservation" cases that have effectively impeded the introduction and use of cost saving techniques and materials. This amendment would make it an unfair labor practice for a union to engage in strikes, picketing, or other work-related activities which are designed to cause the employer to cease or refrain from using or handling the products or services of another company, regardless of whether the purpose is to obtain, recover, or retain work for the employees.
- b) Amendment of Section 8(b)(4) to provide objective, statutory criteria by which union conduct at a common situs can be judged. The object is to prohibit all picketing at gates of a common situs which are reserved for employees of employers who have no dispute with the union.
- c) Amendment of Section 8(b)(6) to reduce featherbedding by expressly prohibiting union demands for services not desired or required by the employer, including those of a standby nature.
- d) Amendment of Section 8(d) to provide that hiring halls and other referral arrangements should not be mandatory subjects of bargaining.
- e) Amendment of Section 8(e) to make it an unfair

labor practice for a union or a company to enter into an agreement to cease or refrain from using or handling the product of another company, regardless of whether the purpose of such an agreement is to obtain, recover, or retain work for employees.

- f) Amendment of Section 10(k) and (1) to provide a speedy process to resolve jurisdictional (work assignment) disputes and to afford prompt, temporary injunctive and other forms of relief, including punitive damages, when strikes occur over such disputes.

Section 10(1) should provide that whenever parties to a jurisdictional dispute have agreed to a voluntary dispute settlement procedure, any party whose interests are affected by a strike may petition a federal district court for an injunction to enable the voluntary machinery to function as intended without a work stoppage. During the effective period of such an injunction, the NLRB General Counsel would process the case to a logical conclusion, and the voluntary machinery would be allowed to resolve the dispute if possible, before final NLRB sanctions are applied.

In addition to the above enumerated amendments, effective federal legislation should be enacted to provide an expeditious and effective procedure for the judicial enforcement of labor agreements. Such legislation, if properly enforced, could significantly contribute to the elimination of acts of self-help to which the parties often resort, and which frequently result in work disruptions.

The Davis-Bacon Act, which has evolved (contrary to Congressional intent) into a form of legislative "guarantee" of the highest level of union wages for employees working on federal projects in a particular area, should be repealed, or at least substantially amended to provide a non-inflationary formula for government contracts.

The acknowledged problems with respect to manpower and apprenticeship training require that a complete reevaluation of training be undertaken by federal and state governments, with the cooperation of labor and management. The object of such a study should be the modernization of training programs to meet current and prospective conditions and the elimination of discriminatory practices respecting entry into such training programs for the construction industry.

Finally, state and local building codes and licensing laws, many of which have helped to extend union dominance and to impede the necessary introduction of cost-saving materials and techniques, should be thoroughly studied, and either substantially amended or repealed and completely rewritten to reflect the many technological advances.

The business community should initiate the repeal or revision of such local laws and codes, where necessary, and should actively participate in and support legislative programs designed to modernize them.

4. *Increase cooperative efforts between representatives from industry and Federal, state and local governments to solve construction industry labor problems.*

In view of the significant expenditures for construction by

the public sector, it is essential that government officials be continually aware of the labor conditions in the construction industry and be actively involved in problem-solving efforts. Federal, state and local governments, in their dual capacities as substantial purchasers of construction and as regulatory authorities, must act in a responsible and effective manner to stem the tide of inflationary pressures emanating from the construction industry.

Leaders from business and industry should play an active role in stimulating that awareness and action on the part of government at all levels. Advisory groups from the private sector should be organized and should meet on either a regular or *ad hoc* basis with government representatives to adopt and implement means of correcting and averting the adverse labor conditions in that industry. In this capacity, the business community would serve the best interests of the nation as well as its own.

Conclusion

The labor problems in the construction industry have reached the stage where ineffective action by both the business community and government can no longer be tolerated. The numerous multi-billion dollar plans to rehabilitate our urban centers, to expand and improve our public transportation facilities, and to construct the necessary projects which will accompany our expanding population and growing economy are in jeopardy. The inflationary pressures on the nation's economy, which spiraling wage settlements have helped to intensify, are one of the nation's major domestic concerns.

Because of the direct effect which excessive wage settlements in the construction industry have on other industries, the business community has a vital stake in the resolution of the labor problems in this industry. Industrial employees will no longer remain content with contract settlements which do not provide for the inflationary increases won by their counterparts in the construction field. And industrial construction projects, including plant expansion and modernization, are seriously jeopardized by these accelerating labor costs. Although very often the sole purpose of such construction is to provide a more efficient producing facility designed to meet foreign competition, the cost of such facility by the time its construction is completed is so high as to defeat its intended purpose.

In a period when increasing costs are shrinking profit margins and pushing up prices, industry cannot afford the luxury of complacency. Industry can, notwithstanding the formidable opposition which may be encountered from some groups, play a significant part in helping to assure a healthy but stable growth in the nation's economy, as well as an adequate return on its own investment. In this endeavor, top management executives must be willing to make the type of commitment that at times will require painful decisions. In addition, industry should seek the active support and cooperation of other segments in our society.

As one of the most influential institutions in our nation, the industrial community must assume this role and actively serve to protect the public interest as well as its own.

F O R T U N E

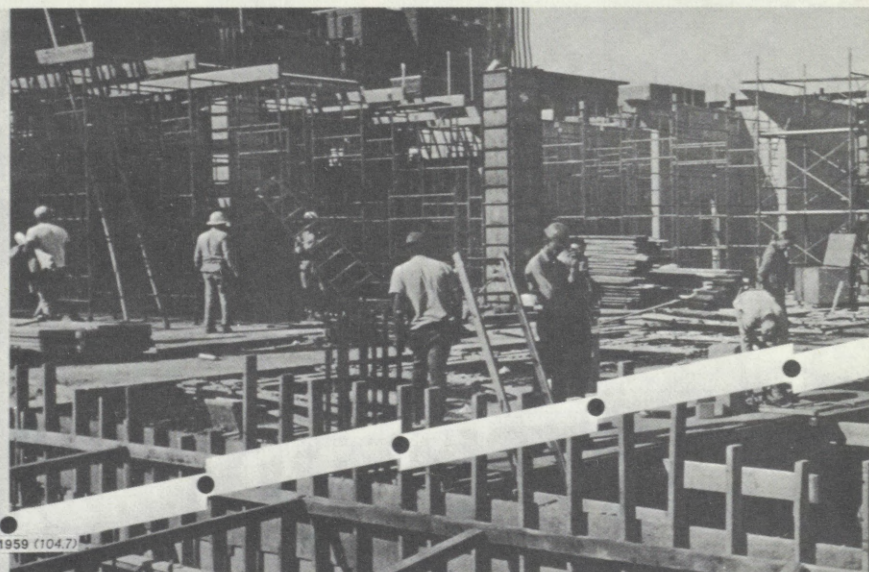
December 1968

THE UNCHECKED POWER OF THE BUILDING TRADES

by Thomas O'Hanlon

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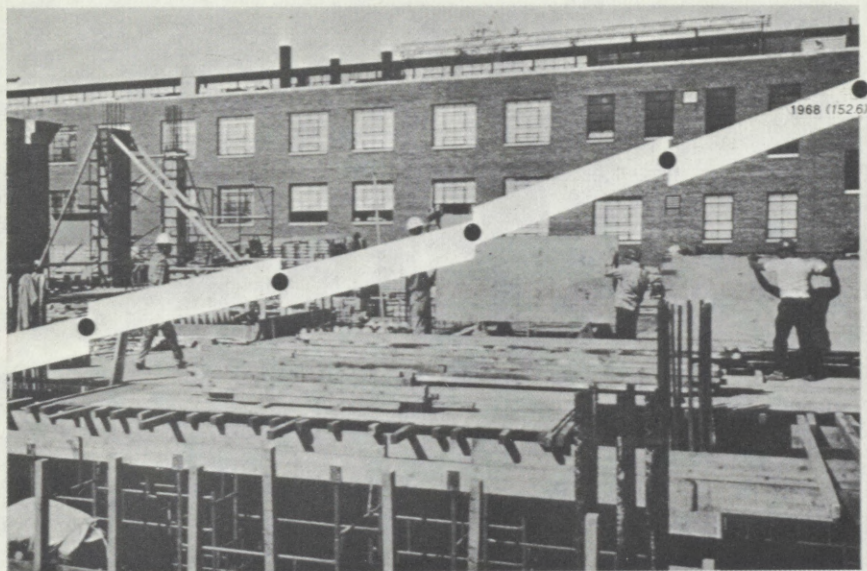
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THE UNCHECKED POWER OF

With tight control of jobs and murderous bargaining strength, construction unions stand athwart the U.S. economy.

The most powerful oligopoly in the American economy today is the loose confederation of craft unions known as the building trades. It comprises almost three million workers, who are organized by eighteen separate crafts in 10,000-odd locals. Collectively they have a stranglehold on construction, an \$80-billion industry that produces one-tenth of the G.N.P. Through restrictive hiring practices and an archaic apprenticeship system they have retarded the natural expansion of the work force in a rapidly growing industry. Their collective economic power, wielded with surprising immunity from both Washington and state capitals, is perhaps the single most important direct contribution to the current wage-price spiral.

The role of the building trades, already critical, becomes a matter of major national concern as the construction industry enters a decade of unprecedented demand. Simply to house new families and to replace the normal demolition of old housing units will require the construction of 20 million new dwellings over the next ten years. In addition, six million new or rehabilitated units are needed for lower-income families now living in big-city slums slated for renewal under the Housing and Urban Development Act of 1968 and the Model Cities Program. Over-all, a 50 percent increase in annual housing demand is likely. The expanding population and economy meanwhile will require nonresidential construction in the form



Construction wages rose nearly 50 percent in the last decade, contributing mightily to building costs, which are in turn basic to the economy. If present trends continue, construction labor costs will double by 1975.

THE BUILDING TRADES by Thomas O'Hanlon

of factories, offices, schools, power plants, roads, and hospitals. Construction of new military facilities is less certain, but a factor to be taken into account. The technical and manpower resources of even the most rationalized industry would be strained to meet this demand.

Yet there is overwhelming evidence that if present practices and trends continue, building contractors may be physically unable to meet the demand, let alone maintain any semblance of price stability. Union power aside, local codes inhibit the use of new materials and techniques, population pressures and land-use restrictions are driving up land costs, the cost of money has increased, and most contractors are too small and too poorly organized for efficient operation. Equally important, though, is the fact that excessive wage demands and antiquated union work rules are limiting innovation and raising costs. Like medieval guilds, unions resist any proposal by management to offset higher wages with increased use of pre-

fabricated components. Bargaining power is virtually one-sided; during strikes and lockouts workers usually can move to lucrative jobs in other cities for the duration. Moreover, the elite journeymen of the building trades have come to regard substantial overtime as a built-in condition of employment. In fifteen major cities, ninety-nine local unions have negotiated contracts for less than a forty-hour week. The envy of every business agent is the twenty-five-hour work week won by New York electricians in 1962. (One expert estimates that the industry pays out \$1 billion a year in overtime costs.)

The earning power of skilled mechanics in the building trades surpasses that of many executives and professionals. In California, some highly skilled carpenters get \$12 an hour. In the Midwest, plumbers and electricians can earn more than \$100 for eight hours of overtime. While these rates are exceptional today, the bargaining power of the unions, if allowed to go unchecked, will make

them commonplace in a few years. If recent increases of 15 percent a year continue, wages will double within five years, far outpacing increases in productivity. With other components of building costs also rising, the prospect is that buyers of construction in 1975, both public and private, will have to pay about 62 percent more per square foot than they did in 1965. Little wonder that some contractors and government engineers are talking seriously about the imposition of wage and price controls in the building industry.

The chain-reaction effect

The building trades' power is strongest in so-called "contract construction"—e.g., offices, stores, high-rise apartments, and highways—whose work force consists almost entirely of union members. Less than half of the home-building industry is unionized, but the unionized sector has been winning the same hefty wage increases won in contract construction, thereby forcing wage rates in nonunion cities to rise more or less in step. And the effect of a wage increase in construction spills over into almost every other industry and service. Recent settlements in the automobile industry, for example, included a 30-cent-an-hour premium for skilled workers such as tool and die makers, who felt that they were losing parity with building mechanics (and the skilled-labor differential, in turn, prompted higher demands among salaried workers). Similarly, this year's aerospace contracts reflect the growing dissatisfaction of workers in that industry at the widening wage differential between themselves and their counterparts in construction. Maintenance men such as plumbers and electricians who perform "house-keeping" chores in industrial plants, government installations, and office buildings are up in arms because their take-home pay parallels industrial rather than craft wages. Some airline mechanics are moving to set up their own bargaining unit outside the industrial structure.

As the gap between industrial and craft wages continues to widen, the likelihood of strikes by industrial unions grows greater, with the possibility that wage demands will cease to bear any relationship to productivity increases. The president of a midwestern construction company has considerable economic basis for saying: "Construction wages now established for 1971 and 1972

are so high that they are the springboard for industrial wage increases far in excess of technological advances in industrial processes in the next five years."

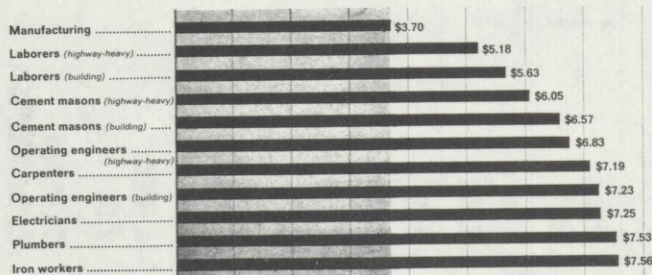
Unequal bargaining partners

The fragmented structure of the industry and the almost passive stance of management in collective bargaining are the major reasons for the building trades' stranglehold. More than 870,000 contractors are in business today, most of them operating within a single locality. Of the 200,000 general contractors only 1,200 have more than a hundred employees. Almost 80 percent of all firms are specialty contractors, providing such services as plumbing, electrical wiring, heating, masonry, and carpentry. Over half of these firms have fewer than four employees.

Contracts are negotiated by a multiplicity of trade associations dealing with local unions, within a given area. By and large, the employer associations are unable to generate bargaining power equal to that of the unions because of the conflicting interests of their members. For one thing, most contractors are undercapitalized and a strike can mean bankruptcy by delaying work. The weakest members of trade associations, therefore, determine wage policy. Moreover, specialty contractors tend to feel that they can stay afloat irrespective of wage settlements since they perform essential subcontracting functions, and they can pass on higher costs to a general contractor. The general contractor, in turn, is pressured by the owner of a project who wants his building completed on time regardless of wage demands. Management's failure to bargain as a unit makes it easy for a business agent to make a deal with the weakest trade association in his area and to use that settlement to whipsaw other contractors.

Armed with local autonomy, the business agent of a construction union has none of the divisive problems that rack employer associations. He negotiates for all workers in his craft in a specified geographic area, and works closely with other craft unions in a local building-trades council. His jurisdiction is carefully spelled out in the union constitution and in his labor agreements with employers. Seldom is his judgment questioned by the parent international union. All his members ask of him is "more!" in the classic Gompers tradition. Conveniently for the unions, most contracts in the building trades expire

WAGES IN CONSTRUCTION ARE FAR AHEAD OF MANUFACTURING . . .



Hourly wage rates in the construction industry have been higher than in manufacturing since World War II, but the gap has reached alarming proportions. This chart shows the average hourly wage rates and fringe benefits that will take effect in December, 1969, under contracts already negotiated for building-trade groups in seven Ohio cities—Akron, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. Assuming that the average manufacturing wage increases by 5 percent in 1969, factory workers in these highly unionized cities will average \$3.70 an hour, and they will still be trailing even unskilled construction workers. Ohio is a pacesetter in construction wages; eight of the ten job categories shown are higher than the national average.

in the spring, when new projects are just getting under way and when a labor stoppage can mean extreme penalties for the contractor. Equally important, contract expiration dates vary so that business agents can use whipsaw tactics with impunity.

The power of the unions was demonstrated this year in the Detroit area when they struck for unprecedented wage increases. The stage was set for a strike back in the spring of 1967, when the small sheet-metal workers' union won increases. Over a four-year period the sheet-metal union negotiated annual wage increases of 14.4 percent, 12.1 percent, 11.8 percent, and 12.6 percent. The total fringe and benefit package adds up to \$3.33 an hour; the final gross hourly wage is \$8.87.

This settlement triggered a bitter contest between five basic trades—electricians, carpenters, cement masons, bricklayers, and plumbers—and their respective employer associations. There was some rivalry, too, among union business agents who wanted to beat the wage rates won by the sheet-metal workers. These unions struck last spring, and the employers declared a lockout for the first time in the city's history. "The industry was virtually paralyzed," says Frank Anderson, labor-relations representative for the Builders' Association of Metropolitan Detroit. "The unions applied sheer economic pressure and they were determined to hold out."

After a two-month strike the employers capitulated, granting about 60 percent of the original demands made by the unions—far more than has been the custom in the past. "Many large and small contractors were in danger of bankruptcy," says Anderson. "The unions know now that in a test of economic strength, employers are the weaker side." The final settlements parallel the gains made by the sheet-metal workers. Over the next two years carpenters' wages will increase 29.7 percent, those of bricklayers by 25.9 percent, cement workers by 27.8 percent, electricians 31 percent, and plumbers 27.6 percent. At the end of the contract, hourly wages including fringe benefits will range from \$7.08 for cement masons to \$8.50 for electricians.

Control of manpower training and deployment is another key element of union strength. In essence, local unions try to create an artificial manpower shortage by restricting the number of union members. They accom-

plish this by controlling apprenticeship programs and by forcing employers to use the union hiring hall as their single source of labor. To be sure, the unions avoid outright violation of the Taft-Hartley Act by including in their contracts a provision that outsiders can be hired if the union cannot supply the manpower necessary within forty-eight hours of the employer's request. In practice, however, an employer who signs a union contract seldom, if ever, hires nonunion men.

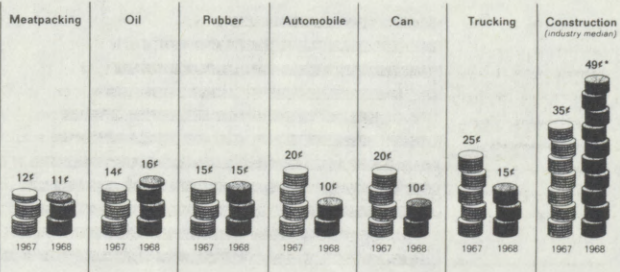
How to create a "manpower shortage"

This policy of protectionism is both discriminatory and wasteful. When business agents exhaust the union roster, they issue work permits to men who are no less qualified, but who are refused union cards. Even Maurice A. Hutcheson, president of the United Brotherhood of Carpenters and Joiners of America, criticized the practice at the union's last convention. "Too many local unions are using subterfuge of one kind or another to keep from taking in members who are working at our trade and receiving journeyman wages," said Hutcheson. "Sometimes these men are kept on permit indefinitely. Sometimes they are turned down by the examining committee even though they may have years of experience."

In a landmark decision last September, a federal district court in Cincinnati ruled that the union hiring hall was operating in an illegal manner. The case involved Anderson L. Dobbins, a fully qualified Negro electrician who was refused membership by Local 212 of the electrical workers' union in Cincinnati. (See "The Case Against the Unions," *FORTUNE*, January, 1968.) The court ordered Dobbins placed in membership, and found the union guilty of eleven separate instances of racial discrimination. But more important, Judge Timothy S. Hogan ordered the union to devise a new system of referral that "will not include differentiations based on union membership or the passing of a union examination, or work for a union contractor." The new system, Judge Hogan ruled, should be an objective one based on prior training, experience, and seniority in working for any electrical contractor, including nonunion firms. It is important to note the implications of the Cincinnati case: the craft unions don't simply discriminate against Negroes; they discriminate against everybody.

... AND THE GAP CONTINUES TO WIDEN

The bargaining clout of the building trades throughout the U.S. is illustrated by comparing recent settlements in construction with those in six other industries. As reported by the private Bureau of National Affairs, the median hourly increase in construction this year (based on settlements negotiated in the first nine months) is more than double that of any other industry, and nearly five times as high as the wage boost slated to take effect in the automobile industry. While the wage increases in other industries have been more or less in line with the rise in productivity, unit labor costs in construction are spiraling upward because of the unions' ban on technological changes, a shortage of manpower, and heavy overtime pay.



*Settlements in first three quarters of 1968

Control of apprenticeship programs is equally unbalanced. Federal law requires these programs to be administered by committees representing both employers and unions, but in practice the unions hold the whip hand. As a consequence, not nearly enough apprentices are entering the industry to compensate for attrition through death and retirement, let alone expansion. This retards union growth, and presages a continuing serious labor shortage for employers who depend on the hiring-hall referral system. The average age of members in the carpenters' union, for example, is 45.6 years, and about 140,000 members out of a total of 800,000 are sixty or older. Other union surveys show that construction is becoming an old man's trade. The carpenters' union, for example, loses between 90,000 and 95,000 members each year, but has only 30,000 apprentices in training.

In a time when the construction industry faces a critical manpower shortage, the heavy dependence on the apprenticeship programs (which generally run for four years) is especially shortsighted. Some international presidents agree that changes are needed to attract new blood to the industry. "I don't necessarily think that a four-year apprenticeship is an absolute requirement," admits Thomas F. Murphy, president of the Bricklayers, Masons and Plasterers' International. "Boys don't need that time to learn a trade, but it's sacred, inviolate, and emotional. Many times I've said, 'Let's change the by-laws,' but it's like trying to change the U.S. Constitution."

A report issued by the Department of Labor in 1964 raises additional doubts about the need for apprenticeship training for journeymen construction workers. That report pointed out that only a small portion of all journeymen received training through apprenticeship. Where did the others learn their skills? Nobody knows, but it is a good guess that most men in construction pick up a trade by simply working on the job. The fact is that there are few jobs in the industry that tax the skills of a full-fledged journeyman. Nonunion contractors, such as Levitt & Sons, a subsidiary of I.T. & T., rely heavily on nonunion labor, and there is certainly no difference in quality between the Levitt homes and comparable houses built by union men. Brown & Root, the big Texas contracting firm, runs three-month programs to train nonunion welders for offshore pipeline projects, at a cost of about \$2,000 per man. Upon completion of the program the men are guaranteed employment and can earn up to \$20,000 a year.

Clearly, management has been lax in not instituting its own training programs. Contractors are now realizing the extent to which labor's control of working procedures militates against productivity increases. Richard Spittler, president of Paul A. Kintz Construction Co., in Alliance, Ohio, sums it up this way: "We now find that the quality of workmanship decreases in direct proportion to the availability of labor. If a man knows another job is available, there's a tendency to slack off."

"Blessing the manifold"

The restrictions imposed by the building trades on the use of prefabricated products are seriously holding down productivity. In the absence of reliable figures, estimates of productivity trends in the building industry vary from a slight decline (an estimate from the President's Council of Economic Advisers) to an increase of about 3 percent a year (from a pro-union economist). In any event, productivity increases are far lower than wage gains, which averaged more than 6 percent last year. The total cost

of union intransigence is not known, since most contractors prefer not to provoke strikes by using off-site fabrication to lower costs. In an incredible ruling the Supreme Court last year upheld a union's right to bar the use of pre-hung doors, holding that such carpentry work is customary on the site. Contractors associations have interpreted this to mean that in any case where the union can prove a historic claim to work, it is entitled to strike to preserve such practices.

The Supreme Court ruling has wide implications. In New York the Federal Court of Appeals interpreted it to mean that sheet-metal workers are entitled to bar the use of parts not made by members of the union. This could be tantamount to approval of the ban against hot cargo, which is illegal under the Taft-Hartley Act. Carried to their ultimate conclusion these two important decisions mean that unions could ban all technical progress and demand that journeymen's wages be paid to factory workers producing components for the construction industry.

The unions often cite historical work practices in construction to justify a veto of even the most elementary advances. The plumbers, for example, have long insisted that piping under two inches in diameter be assembled on the site. The most ludicrous example of this make-work mentality occurred at the Vandenberg Air Force Base, when pipefitters refused to handle a prefabricated manifold, an assembly of pipes and valves used in the hydraulic system of an ICBM launching pad. The unions insisted that the unit be knocked down and re-assembled. Since disassembly might have damaged the unit, the union agreed that it would merely charge for the time that *would have been expended* on the job, and insisted that an appropriate number of men squat around the object. At the end of this period, a welding bead or mark was ceremoniously added and the unit was then trundled off to the assembly site. This ritual act became known as "blessing the manifold."

Washington's neutrality

The power of the unions is enhanced by the government's sins of omission and commission. Since public construction accounts for one-third of the industry's total volume, a strong stand by government against rising costs would be an effective counterweight against union strikes and wage demands. But while other unions have felt the weight of government pressure in wage disputes, Washington takes a neutral stance with the building trades. A representative of a Boston contractors' association points out, "All the government does is ask us to use restraint, but not at the expense of holding up a project. So the business agent tells me at the bargaining table, 'Why should you care, it's federal money.'"

Federal and local agencies have accepted union control of work referral in metropolitan areas, even though the union hiring hall discriminated against nonunion workers. The wage and hour standards on public projects, which are set under the Davis-Bacon Act, generally conform to provisions in union contracts. In some cases, this forces nonunion contractors to pay union wages. And by applying the Davis-Bacon standards to public housing, the government keeps wages at an artificially high level, and frightens away innovative nonunion building contractors who are loath to fight union standards relating to job jurisdictions and the use of prefabricated materials.

In their efforts to block the modernization of the industry, the building trades exert strong lobbying pressures on local government. When Kansas City changed an ordinance so that journeymen plumbers would not have to be licensed and changed the building code to allow the use of plastic and cop-

per materials, the A.F.L.-C.I.O. canceled a scheduled convention in the city and the local plumbers' union collected signatures to force a referendum on the issues. Voters upheld the city council, but the plumbers' union won a temporary injunction to halt changes in the licensing procedure. The reason for the revision was to give recognition to Negro plumbers, who found it difficult, if not impossible, to get union cards. As Mayor Ilus W. Davis put it, "It's easier for a Negro to be invited to a garden party at George Wallace's home than to get into a plumbers' union in Kansas City."

A hoary union argument holds that the lofty hourly wage rates in construction are justified by the seasonal nature of the industry. A significant number of employees in construction indeed work part time, but there is statistical evidence to suggest that a large proportion of union members in fact are working a full year. Studies show that as many as 5,700,000 workers in 1967 had some earnings during the year from construction jobs, but that the average number of workers in construction ranged from a low of 2,863,000 to a high of only 3,341,000. This suggests that a hard-core work force of union members is augmented by men who have been granted union permits and by nonunion workers. It is true that small home builders close down during the winter months. Code specifications in most states prevent the pouring of concrete in severe winter weather, causing some unemployment of union members in that part of the industry. But in many areas commercial building, where most union members are employed, continues year round.

While it is impossible to obtain the employment records of 10,000 locals, a spot check gives added evidence that year-round employment of union members is the rule rather than the exception. Thomas Murray, president of the Chicago Building Trades Council, admits that most of the 100,000 members in his area work 2,000 hours a year or more. The mechanical trades—electricians, plumbers, sheet-metal workers—are least affected by seasonal factors since they work indoors and they are no more vulnerable to involuntary joblessness than most factory workers.

A counterattack in Cleveland

After decades of passivity, some employers are finding that they can successfully challenge the power of the building trades. Earlier this year, when a construction boom in Cleveland forced mechanical contractors to offer an additional day's work at double time to journeymen such as electricians, pipefitters, and plumbers, management decided it was time to act. Cleveland had hardly lagged behind other areas in basic rates; since 1963, wages and fringe benefits for the major crafts had increased by 50 percent or more. In a situation of labor shortage journeymen can be selective; they naturally prefer jobs that pay substantial overtime. The overtime provision in Cleveland allowed a plumber to make \$103 in premium pay, on top of his regular earnings of \$258, for a forty-eight-hour week. In June, however, all contractors' associations agreed among themselves to ban all overtime in the city, the first such ban in the city's history. Says the executive secretary of one association: "Costs were getting completely out of hand and we were tired of being over a barrel."

The Cleveland employers look upon the overtime ban as only a temporary holding action against rising costs. Some contractors broke the united front in October by approving overtime. For true equality in bargaining, many building contractors say, employers from a large region encompassing several states should band together to deal with the unions. As many builders point out, a city-wide strike or lockout has little or no economic effect on union members. "It is not un-

common to have a construction strike in Michigan," explains one construction executive, "and have the strikers working up to 175 miles away in Alliance, Ohio."

Last August, contractors from five states met in Cleveland to discuss ways of bargaining on a multistate basis. At a subsequent meeting in Columbus, over 300 contractors urged the formation of a state-wide construction employers' association in Ohio. "We must develop regional bargaining," says Canton contractor Boyd G. Heminger, "and every contractor, no matter who or what he is, must be legally bound by the actions of this regional organization." The builders agreed to work toward achieving a uniform expiration date of April, 1972, for all labor contracts, urged a study of the use of arbitration procedures in bargaining, and requested that local and national contractors' associations expel members who work under national labor contracts during a local strike. Belatedly the Ohio builders are following the example of trucking companies that combat the power of the Teamsters by bargaining through regional associations.

A deal with Mayor Daley

Mayor Richard J. Daley of Chicago, no enemy of the labor movement, has acted to loosen the grip of the building-trades unions in Chicago. Earlier this year Daley decided that the city should turn to manufactured housing to alleviate the shortage of low-cost dwelling units. After informing the building-trades council, the Mayor authorized the manufacture of 200 houses, half by National Homes in Lafayette, Indiana, and half by Magnolia Homes, a nonunion Mississippi company. Since the houses are assembled in plants paying factory wages (National Homes pays \$2.58 an hour to its workers, compared to \$6.50 an hour paid to Chicago carpenters), the houses can be sold for \$14,500, considerably below the unit cost for conventional on-site construction.

Eventually National Homes, in partnership with the building-trades unions, will build a plant in Chicago to manufacture 2,000 low-cost homes. "We knew that prefabrication was coming into Chicago anyway," says Thomas Murray, "and we don't want to encourage nonunion companies to come in and become a threat." But even though the Chicago plant will be unionized, National Homes insists that it will hire workers off the street, institute an on-the-job training program, and will pay prevailing factory wages. The only work performed by the highly paid journeymen will be the preparation of the site.

"The deal with Mayor Daley can work everywhere," says James Price, chairman of National Homes. Price believes that low-cost housing can be produced by the assembly-line technique, and he is now trying to interest other cities in adopting the methods used in Chicago. In the present circumstances he is not likely to have much luck.

The unions' stranglehold on the construction industry can be broken only if the industry and government, both federal and local, choose to challenge the clear abuse of power. Contractors, more out of fear than conviction, are beginning to realize that they must have a showdown with the building-trades unions if the industry is to become rationalized. More than likely, this confrontation will be traumatic—a state-wide halt of all construction, long and costly strikes—so that unit costs can be brought into line.

An outline for reform

A restructuring of the industry will have to include sweeping changes, some requiring federal legislation:

► *Abolition of the union hiring hall.* Experience has shown

that rather than solving the manpower needs of the industry, the hiring hall is a hindrance. Employers should be free to hire nonunion men without the threat of strike. If some sort of labor pool is necessary, then employers should have an equal voice in it.

► *Reform of the apprenticeship system.* Clearly the four-year training period is unnecessarily long, and it is a formidable barrier for young men with families. Most of the skills used in construction today can be picked up in on-the-job training. Contractors must exert their power to ensure that men trained outside the apprenticeship system have equal job rights, and government agencies must make certain that all qualified workers are admitted to the appropriate union.

► *Abandonment of local bargaining.* Not until a regional bargaining association is formed will contractors have power equal to that of the unions. Common expiration dates for contracts are also necessary to prevent whipsawing.

► *Creation by the federal government of an impartial arbitration board.* Without an impartial board contract disputes almost always end in strikes. And strikes favor the unions since their members can secure employment in other areas.

► *The elimination of barriers to technological progress.* Union influence on building codes, prefabrication, and product use

drives construction costs up inexorably. Union opposition to change is based on fears for job security—fears that, in today's economy, are no longer justified.

► *Adjustment of pension and health and welfare benefit plans.* At present most union members forfeit claims if they leave a local area for employment elsewhere. Portable plans on a nationwide basis would protect union members and allow greater mobility.

► *Enactment of new legislation against discrimination.* Such legislation should include decertification of unions that continue to discriminate against minorities.

The power of the building-trade unions has resulted in the institutionalizing of practices that are often illegal, illogical, and highly inflationary. But the lobbying power of the building-trade unions has never really been challenged. The man in the street feels the effect of the building trades' power when he must pay highly inflated bills for repairs. Contractors have been forced to watch costs soar uncontrollably under the pressure of wage demands. Industrial unions are poised to demand highly inflationary wage increases because Washington has never seriously intervened to hold down settlements in construction. The pressure is building inexorably for a showdown. The collision will be something to see.

END

Mr. NAUMANN. Mr. Chairman, I have only this one particular addition to the statement. That is, that it seems too inherently wrong, where, on a common site, where there might be as many as five or 10 general contractors, each of which may have five or 10 subcontractors, that if all except one of this entire group of contractors have done their work well in their labor relations, with the unions with whom they do business, from whom they gather their work force, it seems too wrong that this one who, for whatever reason, gets involved in a dispute with any union, that it would be possible under this particular legislation for this dispute to shut down the operations of all of the rest of those contractors on that site who have done a good job in their labor relations, and who have made an honest effort and have been successful in maintaining what might be termed a uniform labor policy.

And certainly, it can only be imagined at the additional pressure, regardless of how unreasonable demands might be of the individual contractor in a dispute—he can well imagine the pressure that would be brought to bear on him if there were say, five or 10 or 12, or whatever number, of additional innocent not-involved contractors on that site.

I make this illustration to indicate the tremendous powers that would be placed in the hands of the building trades unions by this legislation, regardless of how it would be used and, to the notion of this industry it would not be used for any good purpose.

Certainly when we look at what is transpiring in the way of wage demands, a settlement that I have before me, in Buffalo, N.Y., the 1972 labor rate for cement masons at \$9.31 for an hour, or ironworkers at \$9.49 an hour, for bricklayers at \$9.67 an hour, for teamsters at \$8.39½ per hour, for carpenters at \$9.48½ per hour, and for laborers at \$8.58½ per hour, can it be said that unions need any more power to get whatever they want? And, as we add this power, it will not, as it already has done, continue the harmful wage-price spiral, that, to the notion of this industry, is largely responsible for the inflationary conditions that effort is being made to combat today.

Mr. THOMPSON. Thank you very much, Mr. Naumann, for your statement.

Mr. Ashbrook, do you have any questions?

Mr. ASHBROOK. Yes; I have two.

Mr. Naumann, I was most interested in your statement regarding what the practical consequences would be, in your opinion, of passing H.R. 100. You said there are probably on each site as many as five prime, or general contractors, with four or five subcontractors, and that any one of these could shut down the whole operation, if H.R. 100 were passed.

Is that basically what you said?

Mr. NAUMANN. That is substantially what I said.

Mr. ASHBROOK. I think if we can understand where the problem would be if one, say, out of all of these 20 or 25 work groups on a common situs were to have that power, is it not by the same token one of them could have a legitimate area of difference, or grievance, but because of the consequences of the *Denver* case they cannot now strike?

Would not the reverse of what you said be also a problem at the present time?

Mr. NAUMANN. No, sir; that safeguard is already in the law as established by the *Moore Drydock* case. In other words, any union has a perfect right, even on a common situs, or in an area where there is a multiplicity of contractors, to pick out the contractor with whom that union has a dispute. The only rules are that the signs and the picketing process specifically indicate toward whom the picketing is directed, that the picketing be carried on in an area where the contractor as closely "as reasonably possible" is the language, to the contractor's operations are carried on, and it is to be carried on when the contractor is actually on the job, or his forces are on the job.

Those are the only safeguards. Otherwise, they have a perfect right to picket the contractor with whom they have the primary dispute, that being with the contractor directly.

Mr. ASHBROOK. I am not sure it works out that way in practice. In the example given in your statement, you are talking about where one wants to shut down the entire site, and probably could, say one out of 20 union units probably could.

The example you are giving now—what about the situation—as I understand it, it is a little different from what you are talking about. Is not the single union now responsible under the law for any unintentioned consequences of its act? Say the one has the proper safeguards you are pointing out at the present time, but for one reason or another the other unions on the situs do not work, shut down in sympathy, would not that one union under the current framework of the law be held responsible, and be considered as conducting an illegal strike?

Mr. NAUMANN. Not if they observe the rules set down by the *Moore Drydock* case. This, then, involves a separate gate.

Let me point out that regardless of what the law now says in prohibiting the secondary boycott, or the interference with a contractor not directly involved in the dispute, it almost invariably, regardless of what the law presently says, almost invariably you must go to court to make a union respect the second gate, which is established to allow the union to picket that contractor with whom they have actually a dispute while the other contractors carry on the commerce of their work through the separate gate. And this is what makes the proposals of House Resolution 100 so serious. Even with the secondary boycott declared illegal, there is no respect, and most often—I believe I am safe in saying in 95 percent of the cases—you have to seek an injunction to get the picketing union, which has a legitimate dispute with one contractor, to stop interference with the other contractors on the job.

Mr. ASHBROOK. Is not the other aspect true? Assuming they follow all the guidelines in the *Moore Drydock* decision, they do circumscribe their activities to the prescribed gate where they normally come in, make it clear it is against their employer, and there still ensues a general shutdown of the site, are they not then under current law held responsible for the unintended consequences of their actions?

Mr. NAUMANN. They would be in theory.

Mr. ASHBROOK. We are talking about the law.

Mr. NAUMANN. When you reach the courthouse, in trying to collect damages in such an action, then the position is that the acts of the individual workman—that the refusal to cross this illegal picket line, that has caused the interference with the other contractor's affairs, is

an act of the individual workman who under the law, under any law, and under the constitution of the United States, has the right not to cross a picket line.

In the rare case where you can prove at the direction of an official, the proper officials of a union, that they have directed their people not to cross a particular picket line or to not use a separate gate, or things like this, you have great strength. But this is a very, very, very rare occurrence.

Mr. ASHBROOK. I appreciate your comments. I, myself, am personally opposed to secondary boycott. But I have also felt for some time that maybe the current framework of the law as it relates to the building trades goes a little too far.

There are others who want to participate. I don't want to take too much time.

But the other thing that runs through your statement and through your testimony is the suggestion that in H.R. 100, if it passes, you would have all sorts of wage increases and wage demands. Don't the contractors know how to say no? Can't they say no? It seems to me that is the easiest way.

Mr. NAUMANN. The negotiating procedure obviously is a procedure of pressures, pressures brought on by much of the present day—many of the present day pressures are brought on by a shortage of workmen in the building trades.

Let me give you a very practical example: There is a subcontractor, let us say, on a multiple site. He is one of 10 subcontractors that are working for a prime contractor. Say his particular contract expires. Now ordinarily under the present rule as his contract would expire any economic action that is taken is taken against him alone. And when he resists then the pressure is brought on him by the unions, and the balance of the contractors on that particular job, if the rules of the law as presently written are observed, they can go on with their operations.

Now, imagine here is this subcontractor, and his union demands \$10 an hour increase for 1 year. Here he is, under the proposal of House Resolution 100; here he is folding up the entire operations of the other nine, or the other 50, in the case of a multiple site. And you can well imagine the additional pressure that is brought to bear on that contractor by the innocent people whose operations are also shut down. And this is where the tremendous increase in power comes in.

Presently, the process of negotiation goes on between contractors, or contractor groups, involving very often one trade, or one union and one contractor. And on this basis it is bad enough, as evidenced by the wage rates and wages increases, fringes, overall cost-producing items, that unions have been successful in negotiating to this point.

With a free hand to where a single union can shut down any project, on the basis of any kind of demands—and, while we are on that subject, the safeguard that is spoken of, that mean overages and working conditions—certainly this applies. There is no safeguard. Because it is very easy to establish an outlandish wage demand to legalize the position of the secondary action. So you can picture the additional tremendous producer of pressure that goes against the contractor if this House Resolution 100 became the law.

Mr. ASHBROOK. In closing, let me say, I think almost anybody sitting in Congress understands a little about pressure. My only comment is that if we gave in as easy as most of you people seem to give in we would give in to everything everybody wants. Because we have about 100 times the pressure that you have. Maybe if you used a little restraint such as we use, perhaps we would not have this inflationary spiral.

Mr. NAUMANN. May I make this comment?

The last time we had a building trades contract come up in the State of Arizona, my home headquarters, where we have enjoyed over many years pretty good labor relations, the last time, because one union was still recalcitrant we took a 72-day strike. Now, is that giving in easily?

Look all over the country, the strikes presently in progress—and I think we have a list of them that I would be delighted with the permission of the chairman to add as a part of this record, of the strikes in progress right today.

In my own organization that 72-day strike cost my own organization \$30,000 a day. And you say we give in easily?

Look at the Detroit case last summer. Look all over the country. Look at Kansas City right today. And the demand is, the biggest argument is with the ironworkers, who say we want \$5 an hour increase for 1 year.

Mr. ASHBROOK. I am glad you said that. It was not reflected in your statement, that you do say no once in a while. I am glad the record shows the contractors can say no once in a while.

That is all I have.

Mr. THOMPSON. Mr. Eshleman.

Mr. ESHLEMAN. One brief question: Is not the national average of the construction union labor, is that not higher than industrial labor?

Mr. NAUMANN. Much higher.

Mr. ESHLEMAN. Do you have the hourly average?

Mr. NAUMANN. Much higher. The hourly average as quoted by the Bureau of Labor Statistics is now \$5.85. And there is attached in the record the statement of the National Association of Manufacturers; there is a graph as part of that statement that shows the increase in construction compared to other industries.

Mr. ESHLEMAN. It is substantially higher than industrial unions?

Mr. NAUMANN. Yes, sir.

Mr. ESHLEMAN. You are not asking for secondary boycott?

Mr. NAUMANN. That is right. I can give you an example.

My secretary's husband is a toolmaker at Hughes Aircraft. He draws \$3.51 an hour. My son, last summer, was a first-6-months' apprentice, operating as engineer's heavy duty mechanic in our maintenance shop. His first-6-months' apprentice rate was \$3.62 an hour.

Mr. THOMPSON. How much was that?

Mr. NAUMANN. \$3.62 an hour.

Mr. THOMPSON. You know where to put your son to work in the summer.

Mr. NAUMANN. As he comes to me and tells me about the difficulty of running to that big shop every morning, it is a little difficult for a father, I point out. This is why I cannot understand so many times why it is difficult in the high schools to recruit apprentices for the

construction industry. They just don't believe the fantastic wages and earnings construction people make.

Mr. ESHLEMAN. Is there honest recruitment of apprentices or do they try to keep them away?

Mr. NAUMANN. The recruiting effort goes on in the normal operation of joint apprenticeship committees, and in the normal operation of apprenticeship programs all over. The fact that the method of training, the time it takes, the limitation by contract of the number of apprentices as a ratio to journeymen, these are the things on the one side, coupled with the continuous effort to interest young people in the construction trade.

This is why, to my notion, our whole concept of apprentice training must be changed. We have to make it more attractive for the young man whom the counselor in high school starts when he is a freshman telling that his mission is to go to college, regardless.

I have made speech after speech after speech to high school groups, and my theme is always the dignity of skill, that this is a good business, that everybody doesn't have to be an engineer or a lawyer or a doctor.

Mr. THOMPSON. Thank you very much.

I have just one comment. I am not going to engage in an argument with you over the interpretation of the *Moore Drydock* doctrine. But I would suggest that it might be useful if you were to read it and the decisions flowing from it. I don't think you fully understand it. I do appreciate your testimony very much, sir.

(The Associated General Contractors of America submitted the following supplemental letter:)

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
Washington, D.C., April 30, 1969.

Subject: H.R. 100 to amend section 8(b) (4) of the Taft-Hartley Act.

HON. FRANK THOMPSON,
Chairman, Special Subcommittee on Labor, Committee on Education and Labor,
House of Representatives, Washington, D.C.

DEAR MR. THOMPSON: We would appreciate your acceptance of this letter as a supplemental statement to the testimony given to your Subcommittee on April 29 by William E. Naumann on behalf of the Associated General Contractors relating to H.R. 100. This concerns a question that was raised in the course of Mr. Naumann's testimony as to the extent to which "situated picketing" is permitted under the "Moore-Drydock rules."

It has been the experience of AGC contractors and chapters that construction unions have a very wide latitude within which to conduct picketing on construction sites within the rules of fair picketing, originated in the Moore-Drydock Case of 1950. The rules require the union having a dispute on any multi-employer site to use a picket sign that identifies the employer with whom it has a dispute, to picket reasonably close to where the employer in the dispute is engaged, and the dispute itself must be located on the site (rather than in a plant or warehouse somewhere else); and the employer in the dispute must be engaged in normal business at the site at the time of the picketing.

The question was raised as to whether a union would be prevented from picketing, even though it followed the "Moore-Drydock rules," if it incidentally resulted in strikes by employees of other contractors, subcontractors, and other employers on the site not involved in the dispute.

The answer is definitely "no," because if the "Moore-Drydock rules" are followed incidental strikes of secondary employers which result from such picketing do not invalidate such picketing according to a line of decisions by the NLRB and the courts from 1950 to date.

To begin with, common-situs picketing in the Moore-Drydock Case itself (92 NLRB 547 decided December 8, 1950) was declared lawful and 8(b) (4) (A) charges against the Sailors' Unions of the Pacific was dismissed. The picketing

was declared legal because it followed the rules of fair picketing, notwithstanding the fact that it resulted in an incidental strike by other employees of the other employer on the site.

NLRB has consistently upheld the right to continue picketing in accordance with the Moore-Drydock rules regardless of the incidental effect it may have of causing strikes for other employers on the common situs. In its 1951 Annual Report, page 226, it states that, "Picketing at the premises of a primary employer is traditionally recognized as primary action (and therefore legal) even though it is 'necessarily designed to induce and encourage third persons to cease doing business with a picketed employer.'" (Documentation 92 NLRB 547 and 84 NLRB 315.)

NLRB and the courts, however, ruled out the picketing in the Denver Building Trades Case (341 U.S. 675) (as noted on page 95 of the 1960 House Labor Subcommittee hearings) because the "Moore-Drydock rules" were not followed and the object of the picket line was the enforcement of "absolute closed-shop conditions on all jobs in the City of Denver." Since H.R. 100 would continue the ban on picketing in disputes "unlawful under the Act," it does not appear likely that the Denver Building Trades type of picketing involving as it did an unlawful objective would be legalized by this legislation. The Denver case does not prove the point that incidental stoppages nullify Moore-Drydock picketing—but the Moore-Drydock case does.

The 1953 NLRB Annual Report, on page 48, observes that, "Ordinarily union conduct is held to be secondary and prohibited if it occurs at the premises of a secondary employer and calls for action of employees of the secondary employer away from the primary disputes actual site. *On the other hand, picketing confined to the primary employers premises (or location on the common site) is lawful even though it has the traditional objectives to induce third persons from entering the premises for business reasons.*" (The documentation is 105 NLRB 136 the Calumet Hecla, Inc.)

The 1954 NLRB Annual Report, page 107, says the Board follows the same reasoning in the *Stover Steel Services Case*, 108 NLRB 221. The report stated that the situs picketing problem "is one of balancing rights. When the picketing union by its picket signs or conduct . . . indicates that the dispute extends beyond the primary employer and thereby directly seeks to obtain the active participation of employees of neutral employers, the picketing union violates the secondary provision of the act. *On the other hand, if the picketing union by its signs and conduct does indicate that its disagreement is only with the primary employer, its conduct is primary and lawful even though employees of neutral employers may of their own volition refuse to cross the picket line and thereby assert pressure on the primary employer.* The secondary effects of legitimate primary picket must be regarded as incidental in the light of the legislative history of the Taft-Hartley Act." (Documentation was previous NLRB decision.)

The 1956 NLRB Annual Report, on page 112, states that the situs picketing rule "Accommodates a dual Congressional objective, i.e., (1) to permit union pressure on a primary employee through appeals to his own employees even *where the primary appeal may have some incidental effect on employees of some other employer*; and (2) at the same time, shield other employers from other than *incidental pressure in controversies not their own.*"

The 1957 NLRB Annual Report, page 102, states that, "If the Moore-Drydock standards are observed, the picketing is lawful and any incidental impact thereof on neutral employees at the common situs will not render it unlawful."

In the same report the Board states, "In applying the Moore-Drydock standards, the controlling consideration has been to require that the picketing be conducted so as to minimize its impact on neutral employees in-so-far as this can be done *without substantial impairment of the effectiveness of the picketing in reaching the primary employees.*"

The 1962 NLRB Annual Report, page 168, discloses some expansion of picketing rights under the Moore-Drydock rules by permitting picketing to continue at the location of the employer in dispute on the construction site, even though the employer in the dispute is temporarily absent for periods of time during the picketing operation. (Documentation is 135 NLRB 250, The Plauche Electric Case.)

The 1963 NLRB Annual Report, page 96, discloses still further expansion of the right to picket under the Moore-Drydock rule where two separate companies were picketed on a common site. NLRB said the interdependence of the two

firms based on common ownership and common control rendered the Moore-Drydock rules inapplicable. (Documentation is 136 NLRB 1321, the Acme Concrete and Supply Company.)

The 1966 NLRB Annual Report, page 108, discloses further expansion of the right to picket when the location of the employer in the dispute on a common site could not be clearly ascertained.

A recent NLRB case approving construction-site picketing in compliance with the Moore-Drydock rules is 172 NLRB 115 Surf-Hunter Electric Co. The impact of the picketing in that case forced the general contractor to discharge the subcontractor against whom the picketing was directed. But charges were dismissed in spite of the adverse incidental effect.

CONCLUSION

We do not believe that there can be any doubt that the policy of the NLRB and the courts is well established in many decisions that, when the Moore-Drydock rules of fair picketing are observed, and the dispute is otherwise lawful, picketing is lawful even though it has an incidental effect of causing work stoppages on the part of employees of secondary contractors, subcontractors, or other employers that are working on the common construction site.

Sincerely,

WILLIAM E. DUNN,
Executive Director.

Mr. THOMPSON. Our next witness this morning is Mr. R. B. Russell of the Carolinas Branch of the AGC.

Will you please identify the gentleman with you, Mr. Russell, and then proceed as you wish?

STATEMENT OF R. B. RUSSELL, PRESIDENT, RUSCON CONSTRUCTION CO., CHARLESTON, S.C., REPRESENTING ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., CAROLINAS BRANCH; ACCOMPANIED BY HENRY PIERCE, MANAGING DIRECTOR OF THE CAROLINAS BRANCH, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. RUSSELL. Thank you, Mr. Chairman.

The gentleman on my right is Mr. Henry Pierce, managing director of the Carolinas Branch, Associated General Contractors of America.

I would like to thank you and the other committee members for allowing us to appear before you this morning.

You asked earlier if I would like to appear with Mr. Naumann. We had not consulted on this. And I would like to focus on more of a regional problem. I appreciate your courtesy, sir.

I would like to read the testimony, first, this morning.

My name is Robert B. Russell. I am president of Ruscon Construction Co., located in Charleston, S.C. Our firm has been engaged in highway, heavy, public utility, and building construction since 1949. Currently, we are performing work in South Carolina, North Carolina, Mississippi, New Jersey, Kentucky, Massachusetts, Illinois, Indiana, and California. I served as president of the Carolinas Branch, the Associated General Contractors of America, Inc., during 1961, and I am currently a member of the labor relations and legislative committees of the National Associated General Contractors of America, Inc.

I appear before you today on behalf of the Carolinas Branch, the Associated General Contractors of America, Inc., an organization com-

posed of 464 regular members representing building, heavy, highway, and public utilities general contractors; and 1,417 associate members, the majority of whom are subcontractors, throughout North and South Carolina. Passage of H.R. 100 would adversely affect this entire membership and all companies with whom they do business.

Some of the reasons why we think H.R. 100 should not be passed are:

H.R. 100 is intended to give virtually unlimited power to the loose confederation of 18 separate craft unions known as the building and construction trades. The bill would legalize secondary boycotts in the construction industry. It is Carolinas Branch, AGC's feeling that to give the building trades the right to exercise a secondary boycott is indeed not in the best interest of the Nation as a whole nor the public at large.

These unions have already enjoyed preferential treatment not accorded other unions or other segments of our society. A prime example of this is special interest legislation exemption of the "hot cargo" ban afforded the building trades under section 8(e) of the Taft-Hartley Act of 1947 and their right to make a union shop agreement before their men are on the job. This is a practice tantamount to a "closed shop" agreement declared illegal by the Taft-Hartley Act.

The power already afforded these unions and resulting abuses is graphically illustrated in a recent article in Fortune magazine.

Mr. Chairman, I ask that that be officially included in the record.

Mr. THOMPSON. Without objection, it will be.

Mr. RUSSELL. H.R. 100 would amend the law on secondary boycotts, (section 8(b)4(B) of the Taft-Hartley Act) to permit a construction union having a dispute with a single employer on a multiemployer worksite lawfully to picket the entire project even though such action would induce work stoppages by tradesmen employed by other contractors. In instances where open shop and union employers are working on the same jobsite, and I might say, we have that condition prevalent not only in the Carolinas but throughout the Southeast, it would be possible for unions to picket in an effort to force open shop employers to agree to sign a union agreement.

In view of the existing ability of the building trades to engage in such contracts with management without the consent of the workmen involved, as mentioned above, all employees of the open shop contractor would be forced to join a union or lose their jobs. With approximately 40 percent of the Nation's construction being done by open shop general contractors who have traditionally worked in harmony with union and open shop subcontractors on the same worksites, it is irrational—I would like to change the word to "unrealistic"—I wouldn't think it is "irrational"—it is unrealistic to believe passage of H.R. 100 would not result in work stoppages on much needed hospitals, military and defense installations, schools, and public housing.

Gentlemen, I think you can see that passage of this bill would turn the entire construction industry overnight into a national battleground surrounded by a picket line.

The proponents of H.R. 100 seem to think that there is one omnipotent employer on every construction site who determines the labor policy for all engaged in work thereon. This is simply not the fact. Most construction projects are performed by one or more gen-

eral contractors and numerous specialty subcontractors. The general contractors, if working under union contracts, employ workmen represented by some five, or maybe more, different building trades unions. The specialty subcontractors each have union agreements with other construction craft unions. No one employer has any control over the labor-management policies, et cetera, of other employers on the jobsite.

If I may digress a moment, I might state that in the State of North Carolina you have a separate contract system for mechanical specialties on all work that comes under the State jurisdiction. So you have a definite problem there. In South Carolina and most of the other South eastern States you do not have this particular condition, but most contracts are let as a general contract incorporating all of these trades. And historically we have worked in harmony on most of the projects in the Carolinas and the Southeast, using both nonunion and union subcontractors and general contractors, with each handling his own work. And I believe the record will show that the labor stoppages and strikes in the area are far below the national average.

The Taft-Hartley ban on secondary boycotts was written by Congress in 1947 after extensive hearings and debates in both Houses. In upholding the legality of this section outlawing secondary boycotts in construction, the U.S. Supreme Court in the *Denver Building Trades* case in its opinion quoted from a statement by the late Senator Taft. The opinion of the Supreme Court, 341 U.S. 675 reads:

Senator Taft, who was the sponsor of the bill in the Senate and was the chairman of the Senate Committee on Labor and Public Welfare in charge of the bill, said in discussing this section: " * * * under the provisions of the Norris-La-Guardia Act, it became impossible to stop a secondary boycott or any other kind of strike, no matter how unlawful it may have been at common law. All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice." 93 Congressional Record 4198.

If H.R. 100 were enacted, it would be like turning the clock back to 1947 and would invite the return of the abuses which then existed and which brought about the passage of the Taft-Hartley Act.

In summarizing: We oppose H.R. 100 for the following reasons, and others:

1. The building and construction trades should not be given any additional special interest legislation which H.R. 100 would provide by legalizing strikes and picketing to force one company to cease doing business with another, and to be used as a club to force open-shop contractors and subcontractors to unionize when their employees do not choose union representation.

2. It would remove rules of fair picketing on construction sites established over the past 19 years by the Federal courts and the National Labor Relations Board.

3. Secondary boycotts are contrary to the national labor policy which states unequivocally the purpose of the National Labor Relations Act, as set forth in section 1 is to "promote industrial stability by eliminating the causes of industrial strife." Secondary boycotts by their very nature do not conform to this objective.

Thank you very much, sir.

Mr. THOMPSON. Thank you, Mr. Russell.

Mr. Ashbrook.

Mr. ASHBROOK. Mr. Chairman, I merely say that Mr. Russell was brought here as a witness at the request of our able colleague from North Carolina, Mr. Ruth. There are certain particular problems they have in that area. I would certainly be glad to yield to our very able colleague from North Carolina for anything he might have at this time. I would yield to Congressman Ruth.

Mr. RUTH. Thank you.

Since North Carolina is one of the States that under 4(B) of the Taft-Hartley Act has options, I would like your comment and while you refer to this in your testimony, would you go into more detail and tell us how it differs in an open shop from a closed shop, that is, this bill?

Mr. RUSSELL. Would you like me to define the difference between open and closed shop operation, sir?

Mr. RUTH. No. I wondered how you felt this bill would affect an open shop compared with how it would affect a closed shop. Is that a fair question?

Do you understand the primary reason I wanted you here is because we do have open shops in North Carolina, and I wanted you specifically to talk to the point of this bill with respect to open shop?

Mr. RUSSELL. Yes. Would you excuse me one second?

Congressman Ruth, prior to answering your question, let me give you a short and brief example of the operation of a construction contract where you operate both laborers employed and skilled craftsmen employed by a general contractor, or a specialty contractor, some of whom have union agreements, some of whom do not have. A general contractor, say, is working open shop. More than likely his specialty contractors and others will be working union personnel. I think I can give you a more concrete example by using something that has happened last year to us:

On a General Electric plant, which had a value of approximately \$30 million, three general contractors were working. We were working, Raymond Concrete Power, and Blount. We started the project because we had the base, the foundation work throughout the entire project.

Mr. THOMPSON. What was the location of this?

Mr. RUSSELL. Charleston, S.C., sir.

As far as wages were concerned, there was no dispute on wages whatsoever. The wages being paid were union scale or better.

Prior to the beginning of work a meeting between the general contractors and the trade union representatives took place.

One morning we had a strike, primarily for recognition, because we had both union and nonunion general and subcontractors working on the project. This tied up this project in excess of 30 days until the National Labor Relations Board issued an injunction stating that a secondary boycott was in effect.

In the meantime, even though we talked about the *Denver* case a while ago, and the separate gates, from a practical standpoint this does not always work.

Mr. THOMPSON. Mr. Russell, that type of activity is regulated by section 8(b)(7) of the act, not the section we are talking about.

Mr. RUSSELL. Yes. I pointed that out. But a similar situation, Mr.

Chairman, could occur where you have union and nonunion men performing work on a project. Particularly in the specialty trades there could be a dispute, and sometimes it is hard to classify that particular dispute. You could stop your entire project by picketing in that manner.

You could also force the nonunion employer to either have his men join the union and make an agreement, or in some cases have to remove him from the site due to the fact that you could not complete your construction or ask him to relieve you of the contract.

MR. THOMPSON. What relief does the South Carolina right-to-work law give you in that instance?

MR. RUSSELL. The South Carolina right-to-work law, I think, is a good law because it gives, in my opinion, the right to choose whether or not he is to join and work with or without a union, with or without representation, so to speak.

But in cases where your work comes under the jurisdiction of the National Labor Relations Act, you really have no recourse under your right-to-work law.

MR. THOMPSON. Excuse me, Mr. Ruth.

MR. RUTH. That is all right, Mr. Chairman. If you have anything relating to this question, I wish you would ask it.

MR. THOMPSON. I have nothing further.

MR. RUTH. That is all I have.

MR. THOMPSON. Mr. Eshleman?

MR. ESHLEMAN. I have no questions, sir.

MR. THOMPSON. Mr. Hansen?

MR. HANSEN. I have no questions, Mr. Chairman.

MR. RUSSELL. If I may say, in the Carolinas and in the Southeast we have a very harmonious working relationship on most of the projects, and you will have contractors, subcontractors, and specialty contractors, working together where one will be represented by a union and another is open shop, and you have no conflict. The men work together, the relationship is good. And we think the secondary boycott bill here proposed would do considerable damage to that climate, and I am sure it will filter back to the industrial employment throughout the area, too.

Thank you, Mr. Chairman.

MR. THOMPSON. I respect very much your point of view. The problems in the so-called right-to-work States are considerably different from the problems in the non-right-to-work States.

Industrial unions, I might point out, already enjoy the very same right to picket which H.R. 100 would give to the construction unions. So the two are not analagous.

I am very conscious of your feelings. And I believe I am aware of the situation in which you find yourself. I am grateful to you for being here.

MR. RUSSELL. Thank you.

MR. CHAIRMAN, I would like to make one comment. I think we are doing a disservice to the industrial worker and the industrial union, to further the power of the trade unions, which will only increase the construction wages and widen the gap Mr. Naumann talked of a while ago, from \$3.70 to \$5.85. These people in the industrial unions will not sit still if we continue to widen this gap. They are already pretty restless, as we both know.

Thank you very much, sir.

Mr. THOMPSON. Thank you.

(The Fortune magazine article referred to was also included in Mr. Naumann's statement and is printed in full in his statement.)

Mr. THOMPSON. Our next witness is Mr. Louis Barba, first vice president of the National Association of Home Builders. You are very welcome this morning, Mr. Barba. If you will introduce the gentlemen accompanying you for the record, I will appreciate it.

STATEMENT OF LOUIS BARBA, FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF HOME BUILDERS; ACCOMPANIED BY HERBERT COLTON, GENERAL COUNSEL; JOHN J. RILEY, DIRECTOR OF LABOR RELATIONS; JOSEPH McGRATH, STAFF VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS; AND PHIL POLIVCHAK, DIRECTOR OF MANPOWER DEVELOPMENT

Mr. BARBA. Mr. Chairman, I am Louis R. Barba, of Chatham, N.J. I am an active builder in that area.

To my right is Mr. Herb Colton, general counsel of the NAHB.

When I refer to "NAHB" throughout my testimony, it stands for the National Association of Home Builders. I use it only for the purpose of easy reference.

To my left is Mr. John J. Riley, director of labor relations for NAHB. To my further left is Mr. Joseph McGrath, staff vice president for governmental affairs of NAHB, and Mr. Phil Polivchak, director of manpower development for NAHB.

Mr. Chairman, members of the subcommittee, I appreciate the opportunity of appearing before the subcommittee today as first vice president of the National Association of Home Builders. NAHB is a national trade association with 468 affiliated State and local home-builder associations. We have more than 50,000 members in the United States, the Virgin Islands, and Puerto Rico.

At the outset, we would like to make our position clear with respect to the objectives of H.R. 100 and companion bills. These would change the Taft-Hartley ban against secondary boycott strikes and picketing and permit such picketing at construction sites. The secondary boycott is an indirect means of attempting settlement of a labor dispute by economic coercion of neutral employers and their employees, rather than by direct pressure against an employer with whom a union has a bona fide labor dispute. We believe that the secondary boycott is the most unjustified and harmful of all strike activity, and for this reason the members of our industry are absolutely opposed to the passage of H.R. 100.

Legislation now pending before the subcommittee, in particular H.R. 100, would, if enacted into law, so change the application of the National Labor Relations Act to construction activity that we are convinced it would initiate an entirely new period of unrest and conflict in construction labor-management relations. Our industry and the Nation can ill afford such a condition in construction at this time when economic stability and growth is so vital to all of the people of America.

Particularly significant is the current effort on the part of the industry and the administration to achieve a substantial increase in the production of more and better housing for our lower income families. Every element of stability in homebuilding, especially in its labor relations becomes of vital importance. We think the housing goals sought are as important to organized labor, as to management and the general public. In the appendix to this statement are spelled out the housing goals set forth by the Housing Administration.

Mr. THOMPSON. Without objection, at this point the appendices to your statement will be made a part of the record.

Mr. BARBA. The NAHB supports those housing goals, and further hearings will be held on those housing goals the week of May 12.

A vast number of the housing units built each year are constructed under collective bargaining agreements between local homebuilder associations and building trades unions. In all areas of the country where collective bargaining agreements exist between homebuilders and the building trades they are the products of multiemployer bargaining with the appropriate trade union or building trades council. Rarely does an individual homebuilder negotiate a contract with a building trades union for wages, hours, and working conditions of his employees. Collective bargaining contracts in the homebuilding industry, therefore, are those involved in multiemployer association bargaining on a local basis by the homebuilders associations composed of a large number of small volume builders in the industry.

Homebuilding comprises a major segment of America's annual construction activity. It is the principal employer of construction manpower. However, the typical homebuilder is truly a small businessman, usually building less than 20 housing units a year. Each new home built provides about 2 man-years employment about half of which is performed off-site and half on the building site. Last year's housing volume provided close to 3 million jobs. A more detailed treatment of the impact of homebuilding on the economy is submitted for the record in the appendix of this statement.

Basically, an efficient and profitable building operation depends upon many factors. The homebuilder has a measure of control over some; on many others, little or no control can be exercised.

A homebuilder is affected by many conditions totally unrelated, but any combination of which affects his ability to meet local housing demands. These factors include weather, financial and lending conditions, construction techniques, material supplies, transportation policies, in general; and, in particular, local economic conditions and labor relations. Additionally, a homebuilder must be able to construct and market housing to meet the needs of American home buyers and at prices they can afford, or else he closes up shop, if he cannot sell his product.

It is important to this industry, therefore, that a proper balance be maintained in the labor relations field and in all the legislative and regulatory policies of the Federal Government so that the industry itself may move ahead to produce the housing that is so vitally needed in this Nation.

The question of secondary boycotts in our industry is frequently linked with the question of picketing at the construction site. It is contended by some that the Taft-Hartley secondary boycott ban pre-

vents any picketing by construction unions. However, it is clearly established under the Taft-Hartley law, section 8(b)(4)(B), that a union already has the right to picket an employer with which it has a direct or primary dispute. We believe the law is clear that a union may not picket other employers with whom the union has no direct dispute whether they are at the same general construction site, an industrial plant, or elsewhere, if the purpose of such picketing is to bring pressure on the employees of a neutral or secondary employer at the plant or job site.

Those who suggest passage of legislation which would exempt the building trades unions from restraints against secondary boycott picketing have advanced the proposition that construction operations are comparable to the functioning of a manufacturing plant. Picketing by a union at a construction site inherently differs from picketing of a manufacturing establishment. The building trades unions assert that all contractors and their subcontractors on the site of construction should be considered as one "employer" under the Taft-Hartley Act. Therefore, the unions maintain that any strike involving a labor dispute between a union representing a particular craft employed at the site, and that craft's employer, should be considered a lawful strike as against the interests of all employers.

This is use of a fiction to reach a predetermined result. Such a theory is without any real substance when you are engaged in the realities of labor-management relations in construction. Actually, while on the one hand the building trades contend for this purpose that all builders and subcontractors on a job are one and the same, on the other hand they fight diligently to maintain their collective bargaining rights separate and distinct against each employer at the site.

In homebuilding, as in commercial and public construction, a portion of the work to be performed is let to subcontractors at a competitive contract price. The subcontractor under his contract with the builder is legally responsible for completing his phase of construction at a predetermined time in construction operations. He must bear to a large degree any additional cost, such as increased material prices, and higher production costs resulting from labor problems in which he is involved, which he may incur after signing his contract for such work. In fact, a majority of subcontractors perform work of a specialty or mechanical nature under labor agreements with unions that represent their employees. These agreements were negotiated between the parties without any semblance of control or influence by outside builders or general contractors. The subcontractor, as a matter of law and practice, is an independent contractor and operates as such.

Here is the crucial issue in secondary boycotts for organizational purposes or secondary boycotts at the construction site over wages, hours, and working conditions arising under the collective-bargaining agreement.

In the average homebuilding operation, the builder makes his sales from onsite model homes. His contract with the home buyer is signed prior to the start of actual construction and contains a firm price and delivery date for the job. At a later point, if one union having a labor dispute at the site is permitted to directly involve other contractors and their employees in the dispute through strikes and picketing ac-

tivity, the builder will be unable to recoup his loss or increased cost of completing the structure under such contract. However, the increased cost of construction resulting from such onsite union activity will be reflected in increased housing costs to the buying public. Their interest will be directly affected, and detrimentally so.

Certainly a labor organization has a right to strike and picket its primary employer, as indicated above. What the law now prevents and should continue to prevent is the extension of a dispute with the primary employer to affect neutral employers and neutral employees at the site. They have nothing to do with the dispute; they have no control over it; they and the public would be deprived of stable industry collective bargaining relationships, business relationships, and working conditions, all of which serve the best interests of our whole economy.

It seems clear to us that the broad language of this legislation, if enacted into law, when coupled with the language of the exemption proviso for construction unions in section 8(e) of the law—as in the text appendix—would grant an unlimited area in which the building trades unions could conduct strikes against use of any products, materials or improved construction techniques. We believe this results from the all-encompassing language used in H.R. 100 which permits strikes over “wages, hours, or other working conditions of employees.” We refer to the product boycott.

The use of advanced materials and items can materially contribute to more efficient construction and are essential for lower building costs, and lower housing prices to the consumer. We greatly fear that enactment of the pending legislation would make it extremely difficult in many areas for the industry to produce more and better quality housing for all Americans, utilizing the latest in improved building materials and products.

This is an important point to remember. In April 1967, the U.S. Supreme Court, by a narrow 5 to 4 margin, rendered its landmark decision in the so-called *Philadelphia Door* case (386 U.S. 612) in which it held union work preservation clauses in labor agreements lawful. Such clauses normally are designed to maintain the status quo at the site concerning work procedures and types of equipment and material to be used, all with the overall objective of preserving work at the site for the onsite worker.

The decision has been highly controversial in labor law circles, particularly in view of the statement in the dissenting opinion that “The relevant legislative history confirms and reinforces the plain meaning of the statute and establishes that the union’s product boycott in this case and the agreement authorizing it were both unfair labor practices. In deciding to the contrary, the Court has substituted its own notions of sound labor policy for the word of Congress.”

If the Congress approves H.R. 100 in its present form, any construction union would then be authorized to conduct strikes or picketing against all employers at the site against any new product, material, or process not to its particular liking. Builders and contractors would be powerless to control such a situation, and be without resort to the present legal protections of the law.

The National Labor Relations Board has clearly explained how primary picketing at a common situs, such as a building site, may

meet the test of lawfulness in its decision in the *Moore-Drydock* case, 1950. These safeguards have been established by the Board to assure that the purpose of the picketing, in connection with a labor dispute with a primary employer, is the exercise of free speech without imposing pressure on that employer through strike activity aimed at neutral persons. These safeguards are as follows:

1. The picket signs must clearly indicate the employer with whom the dispute exists.

2. Picketing at the construction site can be carried on only when the primary employer or his employees are on the job doing their normal work.

3. The picketing must be limited to places reasonably close to the operations of that employer and his workers.

It is important, then, in discussing picketing at the construction site and secondary boycotts, and in analyzing the problems involved, to understand that the free speech aspects of picketing are not banned by the secondary boycott ban of Taft-Hartley.

What is outlawed is the use of economic pressure on neutral persons to resolve the dispute.

We firmly believe that enactment of legislation of the type that has been proposed will seriously cancel many years of progress that the industry has made toward better labor-management relations. It could also be the direct and immediate cause of increased costs to home buyers resulting from resistance to the use of new and more economical methods and materials in homebuilding under the guise of legitimate labor activities. It could well prove to be a major stumbling block to our industry's efforts to produce housing for middle- and low-income families, particularly in the inner-city area under the Federal model cities program.

Over the past decade, it has become quite evident to management in the construction industry that a serious imbalance exists between its powers and those of organized labor at the bargaining table. This condition is the basic cause in many areas of continuing high-wage settlements way beyond normal increases in productivity.

This situation vastly inhibits the ability of the industry to resist ever-increasing restrictive or featherbedding work practices by unions which unjustifiably inflate the cost of construction to the home buyer.

We feel that the subcommittee should very carefully consider the general conditions existing in the construction industry at this time. The industry is currently suffering from an acute shortage of skilled and semiskilled craftsmen in many areas, with no assurance from the building trades unions that existing apprenticeship classes will be enlarged and standard program lengths reduced to alleviate this serious situation.

We believe that in this age of advanced industrial and engineering technology, and with all the modern educational materials and equipment available, adherence by the building trades to apprenticeship program methods and lengths of training more suitable to bygone decades is contrary to the interest of both the public and the Federal Government in having a construction industry work force capable now and in the years ahead, of performing all of the needed housing construction. Lack of such a workforce today is one of the prime reasons the Nation's housing goals have not been met, and may not be for years to come.

We fail to understand this attitude in view of the housing shortage and other construction needs of this country, and the need to effectively increase the workforce that is so urgently required today. The need is immediate.

In view of this industry condition, we are convinced that passage of any legislation to increase the strike and picketing power of the construction trades unions, as would occur if H.R. 100 were to become law, is not in the public interest, and should not be approved by the subcommittee.

In conclusion, we appreciate very much the opportunity afforded to present the views of the homebuilding industry on this legislation.

Mr. THOMPSON. Thank you very much.

Thank you also for the useful appendixes.

Mr. Ashbrook.

Mr. ASHBROOK. I have no questions, Mr. Chairman. I think it is a very comprehensive statement and speaks for itself.

Mr. THOMPSON. Mr. Ruth?

Mr. RUTH. No questions.

Mr. ASHBROOK. Perhaps one question, Mr. Chairman.

What percent, roughly, of the homebuilding industry would be organized, what percentage of the work force?

Mr. BARBA. If you consider it on the basis of the number of builders involved—the majority of our builders are small builders, 20 houses or less. If you consider it on that basis, less than half. If you consider it on the basis of the number of housing units that are constructed, for instance, roughly 15 or 20 percent of the housing units that are built each year are built in California, or high productive areas such as that, California, Florida, a few other States. On that basis about 50 percent or better of the actual housing units constructed are built with union labor.

At the present time about 45 percent of housing starts are apartment houses. Just about all of that is done with union help.

Mr. THOMPSON. Thank you.

Mr. Hansen?

Mr. HANSEN. I have one question.

To what do you attribute the shortage of skills in the home building industry? What are some of the considerations that have led up to this shortage?

Mr. BARBA. It goes back to 1966 when we had our money crunch, if you recall that period, we brought this to everyone's attention many times, and did so before it happened. We could see it, because our membership builds 75 percent of the housing that is built in this country, and we get the reports long before they appear in the papers or anywhere else, of what is happening in the field. In February 1966 we could anticipate what was happening. We let everyone know, but no one would believe it.

Now, what happened was that we dropped from about 1,500,000 units, approximately 1.6 million, 1.5 million, we dropped down to about 1 million. The work force began to disappear. There were no jobs.

Now, that skilled work force which has been built up since the end of World War II got themselves jobs in factories or elsewhere. And once they got located in those spots they never come back, and we can not replace them.

As a matter of fact, I think Mr. Reuther, whose men are not in the construction crafts, has said on a number of occasions that he has more carpenters, masons, plumbers, and so on, working now in his unions, than Mr. Meany has in the crafts.

Whether this is true or false, I have no way of telling. I am just giving you points that have appeared in the paper, in conversation, and so on.

So, in the past 2 years we have lost a good portion of our work force, and they again never came back.

Now, under the apprenticeship training program it takes 4 years to train a new man coming into the industry. It is not necessary that 4 years be spent training that man. The specialties involved in homebuilding—industrial and other types of building, those are different stories. But in homebuilding there are many aspects of the construction techniques that have been simplified to the point that a man can learn those jobs in 3 or 4 or 5 months. It is not necessary that he go through an apprenticeship training program of 4 years.

For instance, when my father was a builder, he used to build his own stairways from the first to second floor, and so on. Today they are made up in a plant, prepackaged, sent to us. All we do is slip them in where they are supposed to fit.

Of course we need a certain number of craftsmen, but on most jobs we don't require that craftsman to make those stairs right on the job.

The same is true of kitchen cabinets. It used to be they were made on the site. Now these are made in union manufacturing plants, and they are delivered and nailed up or screwed up to the wall. Do I make my point clear?

So the training programs, and perhaps the unions, have done a great deal. We would like to join with them and see that many more people are trained in this industry. And I tell you, as we approach a need of 2 million units a year, and more, and beyond that, it is going to be difficult to build that number unless we have the trainees and those people involved in the industry. It is a great industry, and I think they should be attracted to it.

Mr. HANSEN. Thank you.

Thank you, Mr. Chairman.

Mr. THOMPSON. Thank you very much.

Mr. BARBA. Thank you.

(The appendix referred to follows:)

APPENDIX A

SIGNIFICANCE OF HOMEBUILDING IN THE AMERICAN ECONOMY

The impact of new residential construction is a major force in, and spreads throughout, the entire American economic structure. For example, normal housing demand of one and one-half million new dwelling units generates in construction activity alone approximately \$21 billion. When you add to this the impact of expenditures which are directly related to the construction of new dwellings, such as schools, community facilities, service industries, durable goods expenditures and the like, the total directly related impact of housing expenditures amounts to \$35 billion, or approximately \$1.00 in every \$18.00 of the total amount of Gross National Product activity.

Each new home built provides about two man-years of employment, half off-site, a little more than half on-site. Home building annually provides close to

three million jobs. In addition, what the economists call the multiplied effect of such expenditures is also enormous. For example, it has been calculated that the multiplied effect of construction activity as it spreads through the economy in economic terms is about double the direct dollar expenditures. The thousands of products used in new dwellings come from every area of the country and affect virtually every industry. What follows is an analysis of this impact in more detailed form.

Single family units

Construction Cost (Structure alone).—One million single family homes represent a total direct construction expenditure of about \$16 billion, or approximately \$16,000 per house.¹ In terms of labor this means 3,300 man-hours of employment per home, or approximately two million man-years of employment in the single family housing sector alone.²

Site improvement

In addition to home construction the site improvement costs are estimated to be \$2,200 per home, or a contribution of \$2.2 billion to the Gross National Product.³

Multifamily units

Construction Cost.—The construction cost in 1964 of the multifamily structures alone represents at least an additional \$5 billion contribution to the Gross National Product.

The amount spent on site improvements of multifamily units approached \$1 billion in 1964.

Community development

The building of new homes stimulates other types of construction activity. They mean new or bigger schools, more churches, better highways, community facilities, expansion of public utilities, etc. A conservative estimate of these related construction activities would be \$3,000 per single family and \$1,000 per multifamily unit, or an additional \$4 billion added to the Gross National Product.⁴

Additional direct expenditures

Upon completion of a home and its purchase, an additional \$1,000 per unit is generated by the service industries. This would include the commission the builder would pay to the real estate broker, the settlement costs the purchaser would pay the title company, a loan placement fee which would be paid to the local lending institution, fee paid to an appraiser, land surveyor, and real estate transfer taxes paid to both the local and federal governments.⁵

Durable goods and furnishings

A new unit, whether single family or an apartment, necessitates the purchase of new appliances, rugs, drapes and curtains, garden plants and equipment, furniture, and for some, maybe even a new car. New home owners also spend about \$200 the first year on improvements. The total expenditure is estimated to be approximately \$3,000 per unit or \$3 billion additional goods and services in our economy.⁶

Related service expenditures

During the first year the average home owner will spend an additional \$2,000: Real estate taxes on the average new house being built are approximately \$400 a year. Interest on an \$18,000 mortgage would be an additional \$1,020. Insurance for fire, liability, theft, etc., would be between \$60.00 and \$100.00 a year.⁷ Heat and utilities an additional \$360, maintenance and repair \$150.⁸

¹ Based on Bureau of the Census C-25 Series, *Sales Housing*, February 1965.

² Bureau of Labor Statistics, *Labor and Material Requirements for Private One-Family House Construction*, June 1964.

³ Housing and Home Finance Agency, *16th Annual Report*, Table III-35, p. 100. Modified to new sales price of new homes as published by the Bureau of the Census, C-25 Series.

⁴ M. L. Colean, R. J. Saulnier, *Economic Impact of the Construction of 100,000 Houses*. Chicago: The United States Savings and Loan League.

⁵ NAHB Economics Department estimate.

⁶ Colean, Saulnier, *op. cit.*, and NAHB Economics Department estimate.

⁷ Based on Bureau of the Census, *Sales Housing*, C-25 Series; Housing and Home Finance Agency; American Bankers Association; U.S. Savings and Loan League.

⁸ *Survey of Current Business*, and Bureau of the Census, C-25 Series, *Upkeep and Improvements*.

The multiplier effect

Measuring the direct expenditures resulting from the construction of one and one-half million housing units each year, a total demand for goods and services of approximately \$35 billion is generated.

The employment of these goods and services and the wages paid generate additional purchasing power with the resultant stimulation of virtually every sector of the economy. Conservative estimates of this "multiplier" factor suggest that these billions spent on new construction itself generates at least an equal amount of other economic activity, thus bringing the total economic impact to \$70 billion.

High level of homebuilding essential to the economy

New housing construction generates not only demand for on-and-off-site construction activity, the services of a local banking, insurance and real estate agencies, but the manufacturer has a large stake in the homebuilding market. Each home provides a market for better than 3,000 different items.⁹

Any change in new construction volume, though it may be slight, would be felt by thousands of factories, national distributors, and local suppliers. In addition, millions of workers in the industrial community far removed from the construction site would, likewise, be affected.

According to a recent study by the Bureau of Labor Statistics, each \$1,000 of single-family home construction price generates a demand for 72 man-hours of employment on-site, 35 man-hours in transportation, trade and related services, 38 man-hours in the manufacturing stage, and 12 man-hours off-site construction activity. In addition to these "primary" man-hours, they show an additional 47 "secondary" man-hours. Translating this into employment statistics we find that for each \$1,000 of construction activity, there are 204 man-hours of employment generated.¹⁰ A slowdown in construction activity, therefore, would have far-reaching effects on the economy of any community and, in fact, the nation as a whole.

APPENDIX B

SECTION 8 (b) (4) (B) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) (i) To engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or to perform any services; or

(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(B) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;* (Emphasis Added.)

APPENDIX C

SECTION 8 (e) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided, That*

⁹ Estimate by NAHB Economics Department, based on Colean and Saulnier, *op. cit.*

¹⁰ Bureau of Labor Statistics, *Labor and Material Requirements for Private One-Family House Construction*, Bulletin No. 1404, June 1964, p. 5.

nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: Provided further, That for the purposes of this subsection (e) and section 8(b)(4)(B) the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms any other producer, processor, or manufacturer, "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided further, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

APPENDIX D

EXCERPTS FROM THE FIRST ANNUAL REPORT ON NATIONAL HOUSING GOALS, TRANSMITTED BY THE PRESIDENT OF THE UNITED STATES TO THE CONGRESS ON JANUARY 17, 1969

I. INTRODUCTION

"In title XVI of the Housing and Urban Development Act of 1968, the Congress reaffirmed the national housing goals contained in the Housing Act of 1949 of the 'realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family.' However, the Congress found that the Nation's housing supply was not increasing rapidly enough to achieve this goal in the reasonable future. In the process of reaffirming the overall goal, the Congress has determined that it can be substantially achieved—

Within the next decade.

By the construction or rehabilitation of 26 million units, including 6 million units for families of low and moderate income to be built with Federal public assistance.

"Further, the Congress required the President to present a 10-year plan designed to achieve the above targets. The plan is to make provision for—

Dwellings to be provided annually through the operations of the housing market without Federal public assistance;

Dwellings to be provided annually with Federal public assistance;

The annual impact of such production on the number of occupied substandard housing units;

The annual cost of such programs and their impact as reflected in the Federal budget;

What legislative and administrative actions are necessary for the plan's accomplishment;

Any other data, estimates, and recommendations the President deems advisable;

The needs of residential mortgage market funds for the forthcoming year and the prospects for meeting such needs.

"The statute provides that in the years following the 1969 report, the President shall submit an annual report which shall compare performance over the year with the goals that were enunciated in the 10-year program. If the year's performance does not meet the goals previously set forth, the report shall present:

Reasons why the goals were not met;

Any necessary revisions to the goals.

"Further, the annual report shall estimate the availability of mortgage funds over the next year. Finally, it shall include an analysis of the range of actions necessary to accomplish the specific targets and the overall goals.

"This report is presented in fulfillment of the first requirement, that a 10-year housing plan be presented to the Congress. It further reports on specific goals for the fiscal years 1969 and 1970."

* * * * *

A. THE PRESENTLY REVISED GOALS

"The April 1968 report of the Secretary of HUD presented a plan, in accordance with the President's housing message of 1968, for a coordinated program of private housing effort, publicly assisted private housing and publicly owned housing. If carried to fruition, the plan would result over 10 years in the production of over 24 million new dwellings, and the rehabilitation of two million existing dwellings with public assistance. It further estimated that private enterprise without any public assistance would rehabilitate an additional 1.7 million dwellings, which are not included in the plan because such rehabilitation generally does not require mortgage financing and often requires little or no hired labor. The annual production targets to achieve the goals have been revised to reflect the impacts of the events since last April. The revised annual production targets are shown in table 1. Since these are long-range projections, the figures are rounded to the nearest 25,000. The exact budget estimates for assisted housing are 233,000 units for fiscal 1969 and 503,000 units for fiscal 1970.

FIRST ANNUAL REPORT ON NATIONAL HOUSING GOALS

TABLE 1.—ESTIMATED ANNUAL STARTS OF NEW DWELLINGS AND ASSISTED REHABILITATIONS

[Numbers are in thousands and are rounded to nearest 25,000]

Fiscal year	Total and starts assisted rehabilitations	Total private unassisted starts	Publicly assisted starts and rehabilitations
Total.....	26, 200	20, 200	6, 000
1969.....	1, 675	1, 450	225
1970.....	2, 000	1, 500	500
1971.....	2, 225	1, 600	625
1972.....	2, 375	1, 750	625
1973.....	2, 575	1, 950	625
1974.....	2, 650	2, 000	650
1975.....	2, 950	2, 300	650
1976.....	3, 200	2, 500	700
1977.....	3, 250	2, 550	700
1978.....	3, 300	2, 600	700

"Thus, the target for fiscal year 1969 is to start construction of close to 1.7 million new and publicly assisted rehabilitated standard units, including about 233,000 publicly assisted new and rehabilitated units. By comparison, in fiscal year 1968 a total of 1,492,000 dwellings were either started or rehabilitated (1,334,000 private unassisted starts and 157,000 either publicly assisted newly started or rehabilitated units)."

* * * * *

III. THE NEED FOR INCREASING THE HOUSING SUPPLY

A. Estimated housing needs

"The April 1968 report of the Secretary of HUD projected that, over a 10-year time period, a total of 28.2 million dwellings should be either started or rehabilitated. Only 26.2 million units are included in the projected production schedule because the balance would constitute unassisted rehabilitation which normally takes place without mortgage financing and with little hired labor. In the context of title XVI, rehabilitation is considered of a type and character which involves sufficient change in the condition of substandard units to make them standard.

"The following table summarizes a projected need for 28.2 million new and rehabilitated housing units between July 1, 1967, and June 30, 1977:

TABLE 4.—Estimated housing needs: 1967-77

	Millions of units
1. For net additional household formation.....	13.1
2. To permit an increase in vacant units, including seasonal units....	4.4
3. To compensate for units abandoned because of population shifts.....	1.0
4. To compensate for demolition, casualty, and other losses of nondilapidated units.....	2.0
5. To permit the removal of all existing dilapidated units.....	2.0
6. To permit the removal of all units becoming dilapidated over the decade.....	2.0
7. (a) Rehabilitation of nondilapidated, substandard units without public assistance.....	1.7
Subtotal, new units and unassisted rehabilitation.....	26.2
(b) Rehabilitation of nondilapidated, substandard units with public assistance.....	2.0
Total need including publicly assisted rehabilitation.....	28.2

"Adequate data are not available to permit an updating of these estimates, but it is believed that the requirements would be essentially the same for 1968-78. An explanation of the derivation of these needs is reproduced from the HUD April 1968 report in Appendix A to this report.

"The President's Committee on Urban Housing (the Kaiser Committee) commissioned TEMPO, the General Electric Corporation Center for Advanced Studies, to estimate the Nation's need for housing for the period 1968-78. That study came to the conclusion that 26.7 million housing units should be built or rehabilitated over the 10-year period. The principal difference in the conclusions of TEMPO as compared with those of HUD was in terms of how many units were needed to permit an adequate number of vacant units in the housing supply in order to accommodate mobility on the part of the population.

"The President's National Advisory Commission on Civil Disorders and Commission on Urban Problems each endorsed the HUD estimates of housing needs over the decade. The former advocated a more rapid and the latter a less rapid schedule for producing the six million assisted housing units. It is significant, however, that working independently, all the projections of need arrived at the same level of magnitude."

* * * * *

TABLE 18.—ESTIMATED SALES PRICE OR REPRODUCTION COST FOR NEW HOUSING, 1969 AND 1970, BY TYPE OF PROGRAM

Program	Average reproduction cost or sales price, 1968	Estimated cost	
		Fiscal year 1969	Fiscal year 1970
Unassisted housing:			
1- to 4-family units:			
Conventionally financed.....	\$29,000	\$30,080	\$32,250
FHA.....	19,275	20,500	21,450
VA.....	17,900	19,000	19,900
Cash (no mortgage).....	27,000	28,680	29,900
Multifamily.....	15,000	15,940	16,710
Assisted housing:			
Sec. 235.....	(1)	15,000	15,000
Sec. 236.....	(1)	15,500	16,245
Rent supplement.....	13,000	13,800	14,470
Public housing.....	15,500	16,470	17,250

¹ Not applicable.

Mr. THOMPSON. Our next witness is Mr. Elwood Moffett, president of the International Union of District 50 of the UMWA, United Mine Workers.

Mr. Moffett.

Mr. MOFFETT. Thank you, Mr. Chairman.

Mr. THOMPSON. Will you identify the gentleman with you?

If you would like you may read your statement or you may summarize it in the interest of time.

STATEMENT OF ELWOOD MOFFETT, PRESIDENT, INTERNATIONAL UNION OF DISTRICT 50, UMWA; ACCOMPANIED BY ALFRED D. TREHERNE, GENERAL COUNSEL, DISTRICT 50, UMWA, WINTHROP A. JOHNS, WASHINGTON, D.C.

Mr. MOFFETT. Mr. Chairman, distinguished members of the committee, I will summarize the statement.

Mr. THOMPSON. Without objection, the statement and the attachments will be made a part of the record.

Mr. MOFFETT. On my left is Alfred D. Treherne, for 5 years chief counsel of District No. 6 of the United Mine Workers in the State of Ohio, and for the past 6 years has served as associate counsel and general counsel of District 50.

On my right is Winthrop A. Johns, of the firm of Reilly, Johns & Zimmerman, of Washington, D.C. Mr. Johns served as Assistant General Counsel of the National Labor Relations Board for 15 years, from 1947 through 1962, with general supervision over the processing of all secondary boycott charges, jurisdictional dispute charges, and organizational picketing charges and related charges.

As president of District 50, United Mine Workers of America, I appear before this subcommittee today regarding the position of our organization and its members on the pending House bills dealing with situs picketing.

The International Union of District 50, United Mine Workers of America, has contracts with employers applicable to their more than 220,000 employees, most of whom are district 50 members, and several thousand of whom are employed in the heavy and highway construction industry throughout the United States.

We appear in opposition to H.R. 100, introduced by Mr. Thompson of New Jersey on January 3, 1969, and companion bills 756, 1005, 1084, 3092, and 5820. Our opposition is not directed to the objective of those bills but, rather, to their present form.

We can withdraw our opposition if such bills are amended to delete the proviso: "who is not engaged primarily in the construction industry," which appear on page 2, lines 11 and 12 of the printed copy of H.R. 100.

We appear in support of H.R. 4589, introduced by Congressman Kee of West Virginia on January 27, 1969, as this bill reflects our amendment I have mentioned.

The records of this subcommittee will show that our organization appeared before it in 1965, and again in 1967, in opposition to bills containing the identical amendment referred to previously. These were H.R. 6363 in 1965 and H.R. 100 in 1967. Our position and arguments in opposition to that proviso are the same today as they were in 1965 and 1967.

If we are repetitious it is because we are as sincere in our opposition today as in years past. Time and experience have increased our dedication and, in many instances, substituted reality for prophecy.

H.R. 100 and companion bills as presently drawn, in our judgment can be, and perhaps will be, utilized to cause irreparable harm to district 50 in relation to its activity in the heavy and highway construction industry.

Prior to 1965 efforts to pass situs picketing legislation had been opposed by a large number of industrial unions. In order to overcome that opposition, language was devised to immunize from situs picketing, "a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry."

In other words, immunity to certain industrial unions which had previously opposed situs picketing.

Many of the proponents of the objectionable language of H.R. 100 contend district 50 contracts would have the same protection after H.R. 100 is passed as they have at the present time. Their assurances that the bill will not take away any of our present rights while, at the same time, refusing to write these assurances into the bill by accepting our proposed amendments, confirm our objections as being meritorious.

If H.R. 100 is passed in its present form, certain unions could:

1. Under the guise of "area standards picketing," compel cancellation of a contract and removal from the project of any employer under contract with "a wrong union."
2. They could strike or threaten to strike a neutral contractor or subcontractor or appeal to his employees not to work, in order to remove the "wrong" union from the project.

It is our legal opinion that H.R. 100 will permit common situs picketing in situations where it is held unlawful under present statutes. As such, Congress will be allowing certain unions to force their own employers to remove district 50 contractors from the site or to make district 50 contractors submit to disguised or unstated requests of other unions, in order to stay on the job.

We have attached a legal memorandum with the statement we filed with this committee, supporting our position.

Of equal importance to district 50's objection is the fact that the proposed situs picketing bill will provide a tailormade alibi for denying equal opportunity to the millions of workers whose color keeps them in the lower economic levels of our society. If this legislation in its present form, H.R. 100 and companion bills, becomes the law of the land, thousands of employees in the construction industry will lose their present protection, if they happen to be of the "wrong" color or the "wrong" union.

Those committed to situs picketing as set forth in H.R. 100 and companion bills contend it merely resorts certain employees and unions to equal status with industrial workers and unions.

This contention hardly deserves a reply.

Under sections 8(e) and 8(f) of the Landrum-Griffin law those certain unions can lawfully execute "hot cargo" provisions, strike for such clauses with statutory protection, execute lawful prehire contracts, and effectuate a minimum 7-day grace period under a union shop agree-

ment. Excepting the garment industry, neither workers nor unions in manufacturing have such rights.

There are many advantages to be gained from industrial unionism in the construction industry. These advantages become more evident as this industry, with its growing pains, demands the flexibility of industrial union organizations to meet production requirements. The National Labor Relations Board has found the industrial type of organization in heavy and highway construction to be presumptively appropriate. Why, then, should industrial unions and the construction industry be impeded by Federal legislation enfranchising one union and one type of organization, along vast lines only.

We seek no advantage over other unions in the construction industry. We plead that this committee not approve any bill that will, either directly or indirectly, deprive the construction workers of their legal right to select a union of their own choice. We urge that this committee protect good and valid collective bargaining agreements from the abuses of situs picketing. If Congress passes H.R. 100 in its principal form they will be legislating legal interference with good and valid contracts.

We reiterate our position. The International Union of District 50, United Mine Workers of America, is not opposed to situs picketing as such. We do support H.R. 4589 as introduced by Mr. Kee, of West Virginia. If the words "who is not engaged primarily in the construction industry" are deleted from H.R. 100 and companion bills our opposition can be, and will be, withdrawn.

We thank you for allowing us to state our position before this committee on the pending situs picketing bills.

It is hoped that you consider our position in your deliberations concerning this proposed legislation.

Mr. THOMPSON. Thank you very much, Mr. Moffett, for your statement.

(The statement and appendix referred to are as follows:)

STATEMENT OF ELWOOD MOFFETT, PRESIDENT OF INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A.

Mr. Chairman, my name is Elwood Moffett. As President of the International Union of District 50, U.M.W.A., I appear before this Subcommittee today regarding the position of our Organization and its members on the pending House Bills dealing with "situs picketing".

The International Union of District 50, U.M.W.A., has contracts with employers applicable to their more than 220,000 employees, most of whom are District 50 members and several thousand of whom are employed in the Heavy and Highway Construction Industry throughout the United States. For several years, we have written state-wide contracts with a great number of contractors in heavy and highway construction in Kentucky, Pennsylvania, and West Virginia, with many other states presently under similar consideration.

POSITION

We appear in opposition to H.R. 100, introduced by Mr. Thompson of New Jersey on January 3, 1969, and companion Bills 756, 1005, 1084, 3092 and 5820. Our opposition is not directed to the objective of these Bills—but, rather to their present form.

We can withdraw our opposition if such bills are amended to delete the proviso: "who is not engaged primarily in the construction industry", (Page 2, beginning on line 11 and ending on line 12, of the printed H.R. 100).

We appear in support of H.R. 4589, introduced by Mr. Kee of West Virginia on January 27, 1969, as this bill reflects our amendment proposed above.

The proviso we oppose in part and which would be added to Section 8(b) (4) of the National Labor Relations Act, as amended, by H.R. 100 and companion bills, reads as follows:

"*Provided further*, That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site *who is not engaged primarily in the construction industry.*" (We object to the underscored words and Congressman Kee has omitted these words from his bill.)

The records of this Subcommittee will show that our Organization and its members appeared before it in 1965, and again in 1967, in opposition to bills containing the identical amendment above. These were H.R. 6363 (1965) and H.R. 100 (1967). Our position and arguments in opposition to the above proposed amendment are the same today as in 1965 and 1967. If repetitious, it is because we are as sincere today in our opposition as in years past. Time and experience have increased our dedication and, in many instances, substituted reality for prophecy.

MONOPOLY IN CONSTRUCTION

H.R. 100 and companion bills as presently drawn can, in our judgment, and perhaps will be utilized to injure and cause irreparable harm to District 50 in relation to its activity in the Heavy and Highway Construction Industry.

Prior to 1965 efforts to pass "situs picketing" legislation had been opposed by a large number of industrial unions. In order to overcome that opposition language was devised to immunize from situs picketing: "a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry." In other words, immunity to certain industrial unions which had previously opposed situs picketing.

This amendment came promptly after the February, 1965, agreement between these certain unions and union sponsors of the legislation, whereby these certain unions agreed, for conditions, not to oppose situs picketing any longer. This amendment was and is statutory assurance to these certain unions that they won't be troubled with common situs picketing. However, this amendment gives no protection against situs picketing to District 50 which represents the employees of many employers engaged "primarily in the construction industry."

This March, 1965, amendment left no ambiguity in the language of the proposed bill as to its intent and purpose—a purpose and intent which could injure and do irreparable harm to District 50. It is this amendment, adopted by H.R. 100, that we oppose today.

INTERFERENCE WITH CONTRACT

Many proponents for the objectionable language of H.R. 100 contend that contracts of District 50 would have the same protection after H.R. 100 is passed as they have at present. Their assurances that the bill will not take away any of our present rights while, at the same time, refusing to write these assurances into the bill by accepting our proposed amendments, confirm our objections as being meritorious.

The landmark decision in *Markwell and Hartz, Inc.*, 155 NLRB 319 (10/25/65) further supports our position. In that instance, pickets were placed on a construction site by another union. Work was halted for no other reason than the general contractor's workers belonged to District 50 and not the picketing union. The National Labor Relations Board ruled that the picketing of the gates reserved for the use of contractors not involved in the dispute was a secondary boycott and in violation of the Act. If the proposed situs picketing bill (H.R. 100) had been law at the time, the picketing would have been legal and the project could have been shut down until the picketing union secured the monopoly they were seeking. The Board's order was enforced by the U.S. Court of Appeals (387 F. 2d 79) and the United States Supreme Court denied certiorari on May 20, 1968 (57 LC 12, 701).

ACTIVITY PERMITTED BY H.R. 100

If H.R. 100 is passed, as it presently exists, certain unions can—

(2) Strike or threaten to strike a neutral contractor or subcontractor or contract and removal from the project of any employer under contract with a "wrong union"; and

(2) Strike or threaten to strike a neutral contractor or subcontractor or appeal to his employees not to work in order to remove the "wrong union" from the project.

Such activity would not be "unlawful under the act," and particularly not unlawful under Section 8(b)(7). In this respect, Section 8(b)(7) is limited by its own provisions to proscribing picketing or threats of same for two purposes only; i.e., recognition and organization. On the other hand, Section 8(b)(4) proscribes strikes and work stoppages. In addition to the differences in the activities proscribed by Sections 8(b)(4) and 8(b)(7), the objects prohibited by each section are different. Section 8(b)(7) prohibits picketing or threats of same only when the object is *recognition or organization*. Section 8(b)(4) has many prohibited objects, one of which is to "force one person to cease doing business with another." If amended by H.R. 100, Section 8(b)(4) would *not* prohibit activity for the stated purpose of removing a "wrong-union" contractor from the job site. Neither would Section 8(b)(7) give relief in such instances.

Further, Section 8(b)(7) would give no protection against so-called "area standards picketing". In this respect, we again remind you that District 50 organizes in the construction industry on an industrial-union basis. As such, there may be variances in the classifications used by District 50, U.M.W.A., and in instances, a lesser number, as compared with certain other unions. Although this may be a variance without significance, it does provide an opportunity for "area standards picketing". If a prime contractor organized by one of these other unions, or several of them, yields to *situs picketing* for the purpose of removing a contractor with a "wrong union" from the job site, the unstated and disguised organizational purposes of the picketing union have thus been accomplished.

It is our legal opinion that H.R. 100 will permit common *situs picketing* in situations where it is held unlawful under the present statutes. As such, Congress will be allowing certain unions to force their own employers to remove District 50, U.M.W.A. contractors from the site or to make District 50 contractors submit to disguised or unstated requests of other unions in order to stay on the job. Such activity should be no more lawful in the construction industry than it is in the manufacturing industry.

In support of our above legal position, we attach an opinion from Mr. Winthrop A. Johns, Washington, D.C. Mr. Johns is an expert in this field of law, having acted as Assistant General Counsel of the National Labor Relations Board for twenty-five years before entering private practice in labor law in 1962. While with the Board, Mr. Johns had general supervision over the processing of all secondary boycott charges, jurisdictional dispute charges, organizational picketing charges and other related charges.

DISCRIMINATION

Of equal importance to District 50's objection is the fact that the proposed "situs picketing" bill will provide a tailor-made alibi for denying equal opportunity to the millions of workers whose color keeps them in the lower economic levels of our society. A situation occurred in St. Louis, Missouri, in 1966 when E. Smith Plumbing Company, employing Negroes who were members of the Congress of Independent Unions, appeared on the construction site of the St. Louis Arch. Even though this project was financed by Federal funds, under the supervision of the Department of the Interior, certain other unions walked off the job upon Smith's appearance. The stoppage lasted one month. In that case, the National Labor Relations Board enjoined the other unions from threatening the employees of the neutral employers to force them to cease doing business with E. Smith Plumbing Company under Section 8(b)(4) (i) and (ii) (B) of the Act. However, if the *situs picketing* legislation proposed by H.R. 100 and companion bills becomes the law of the land, thousands of employees in the construction industry will lose this protection if they happen to be of the "wrong" color or "wrong" union.

EQUAL STATUS

Those committed to situs picketing as set forth in H.R. 100 and companion bills contend that it merely restores building trade employees and unions to a comparative equal status with industrial workers and unions. This contention hardly deserves reply.

Under Sections 8(e) and 8(f) of the Landrum-Griffin Law, those certain unions can lawfully execute "hot-cargo" provisions; strike for such clauses with statutory protection; execute lawful prehire contracts; and effectuate a minimum 7-day grace period under union-shop agreements. Excepting the garment industry, neither workers nor unions in manufacturing have such rights.

GOVERNMENT FRANCHISE

Many employees and employers see the advantages of industrial unionism in the construction industry. These advantages become more evident as this industry, with its growing pains, demands the flexibility of industrial union organizations to meet production requirements. The National Labor Relations Board has found the industrial-type organization in heavy and highway construction to be presumptively appropriate (*Nello L. Teer Co.*, 4-RC-5147 (1963); *Greene Construction Co.*, 133 NLRB 152). Why then should industrial unions and the construction industry be impeded by federal legislation enfranchising one union and one type of organization, craft lines only?

SANCTITY OF CONTRACT

We seek no advantage over other unions in the construction industry. We plead that this Committee not approve any bill that will, either directly or indirectly, deprive the construction workers of their legal right to select a union of their own choice. We urge this Committee to protect good and valid collective-bargaining agreements from the abuses of situs picketing. If Congress passes H.R. 100 in its present form, they will be legislating legal interferences with good and valid contracts. As stated previously, such a law would provide a culture for the germ of organizational raids and jurisdictional disputes. Equality can not be restored or retained by a monopoly.

In conclusion, the International Union of District 50 is not opposed to "situs picketing" as such. We support H.R. 4589 as introduced by Mr. Kee of West Virginia. If the words "who is not engaged primarily in the construction industry" (page 2, beginning on line 11 and ending on line 12, of the printed bill H.R. 100) are deleted from H.R. 100 and companion bills, our opposition can and will be withdrawn.

We thank you for allowing us to state our position before this Committee on the pending situs picketing bills. It is hoped that our statement will receive consideration in your deliberations concerning this proposed legislation.

REILLY, JOHNS & ZIMMERMAN,
WASHINGTON, D.C., April 15, 1969.

To: Alfred D. Treherne, Esq., general counsel, International Union of District 50, United Mine Workers of America.

From: Winthrop A. Johns, Reilly, Johns & Zimmerman.

Subject: Whether enactment of H.R. 100, the situs picketing bill introduced by Congressman Thompson of New Jersey, or any of its companion bills, would adversely affect District 50.

Because of my experience as Assistant General Counsel of the National Labor Relations Board from 1947 to 1962, with general supervision over the processing of all secondary boycott charges, jurisdictional disputes charges, organizational picketing charges, and related charges, you have requested my legal opinion on the above subject. In preparing this opinion I have examined, in addition to H.R. 100 (the Thompson bill), H.R. 756, 1005, 1084, 3092, 4589, and 5820. In my opinion the enactment of any of these bills, *except H.R. 4589, introduced by Congressman Kee of West Virginia*, CLEARLY WOULD ADVERSELY AFFECT DISTRICT 50 IN THE HEAVY AND HIGHWAY CONSTRUCTION INDUSTRY.

These bills all propose to amend Section 8(b)(4)(B) of the National Labor Relations Act—the secondary boycott provisions of the National Labor Relations

Act—by adding thereto a proviso exempting from the coverage of that section union secondary boycott activities at construction sites. Section 8(b) (4) (B) is the *only* section in the National Labor Relations Act which prohibits a union from striking or picketing one employer to compel him, or another person, to cease doing business with some other employer. With the enactment of H.R. 100, or any of the other bills *except Congressman Kee's H.R. 4589*, certain unions will be legally free to strike and threaten to strike, and perhaps picket, a construction site to force any employer off the job.

The proponents of H.R. 100 and its companion bills, *except H.R. 4589*, have contended from time to time that enactment of this legislation would not have this effect. They have contended (1) that the bills are directed only at persons who are in a direct relationship of "joint venturers" or "contractors and subcontractors" on a construction site; (2) that the bills only permit conduct at the construction site which is "not unlawful under this Act"; (3) that the bills only permit conduct at the construction site which is not "in violation of an existing collective bargaining agreement"; and (4) that District 50 will be adequately protected by the above and other provisions of the National Labor Relations Act. I will discuss these four contentions in the order set forth.

First, there is nothing in any of these bills which limits their application to persons who are in a direct relationship of "joint venturers" or direct relationship of "contractor" and "subcontractor". These terms as contained in the various bills merely are descriptive of the classes of persons against whom a union's secondary boycott activities may lawfully be directed under the bills. Thus, even if a District 50 contractor had a direct contract with the owner to perform certain work at an isolated area of the construction site, he nonetheless lawfully could be forced off the job by secondary boycott activities under these bills.

Second, the limitation of permissible secondary boycott activities under these bills to those "not unlawful under this Act" is meaningless insofar as District 50 is concerned. The only provision of the National Labor Relations Act which prohibits secondary boycotts, or conduct to force one person to cease doing business with another person, is Section 8(b) (4) (B) of the Act. H.R. 100, and its companion bills, propose to remove this prohibition on construction sites. Therefore, if H.R. 100, or a companion bill without the modification of Congressman Kee's H.R. 4589, is passed, it will not be "unlawful under this Act" to apply force to any other person on a construction site to compel a cessation of business with a District 50 contractor. The language would apply, for example, however, to a secondary boycott in aid of a jurisdictional dispute, which latter is prohibited by Section 8(b) (4) (D) of the Act; but it would not apply to a situation where the object is to force an employer off the site. This latter normally would be the object in respect to a District 50 contractor.

Third, the limitation of permissible secondary boycott activities under these bills to those not "in violation of an existing collective bargaining contract" likewise is meaningless insofar as District 50 is concerned. This provision means only that a union may not engage in secondary boycott conduct on a construction site when such conduct would breach its own contract with an employer on the site. A union cannot *violate* a contract to which it is not a party. Therefore, this language could not possibly be construed as removing from the sweeping consequences of H.R. 100 and its companion bills, without the modification contained in Congressman Kee's H.R. 4589, secondary boycott activities to get another person thrown off the construction site who has a contract with District 50.

Fourth, the other provisions of the National Labor Relations Act would not protect District 50 from the consequences of enactment of H.R. 100 or like situs bills. The other provisions of the National Labor Relations Act most frequently mentioned as affording this protection are contained in Section 8(b) (7).¹ Section 8(b) (4) (B) and Section 8(b) (7) are totally different both in respect to the conduct prohibited and in respect to the object for which such conduct is proscribed.

¹ On one or two occasions there also has been reference to Section 8(b) (4) (D) of the Act. But this section—the jurisdictional disputes section—only prohibits conduct to force an employer to assign work to one union's members rather than to another union's members. It does not prohibit secondary boycott conduct where the object is to force a particular employer off the job.

Section 8(b) (4) (B) of the National Labor Relations Act, in brief,² prohibits—

1. Strikes or work stoppages;
2. Inducement of strikes or work stoppage; or
3. Threatening, coercing or restraining any person, where an object is—
 - (1) To force one person to cease handling or dealing in the products of another; or
 - (2) To force one person to cease doing business with another.

Section 8(b) (7) of the National Labor Relations Act, in brief,³ merely prohibits—

1. Picketing; or
 2. Threats to picket,
- where, under certain circumstances, an object is—
- (1) To force an employer to recognize a union; or
 - (2) To force employees to select a union to represent them.

Thus, Section 8(b) (4) (B) protects persons from a variety of coercive conduct, including picketing and threats to picket, for the objects proscribed; whereas Section 8(b) (7) solely prohibits picketing and threats to picket for its proscribed objects.

H.R. 100 and companion bills, although sometimes referred to as situs picketing bills, would not only legalize picketing at construction sites for an object prohibited by Section 8(b) (4) (B). Instead, these bills would eliminate all protection for construction workers and their employers from secondary boycotts now contained in Section 8(b) (4) (B), by the sweeping language—

“... nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site . . .”

² Section 8(b) (4) (B), in full, reads as follows:

“Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

“(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

* * * * *

“(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;”

³ Section 8(b) (7), in full, reads as follows:

“Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

“(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under Section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of Section 9(c) (1), or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).”

Although "threats" to engage in the specified conduct are not expressly removed from the prohibition of Section 8(b)(4)(B) by the situs bills, it is settled law under the National Labor Relations Act that the "threats" prohibited by this section are only threats to engage in proscribed conduct; if the conduct is not prohibited, the threat to engage in it is not proscribed. See *N.L.R.B. v. Servette, Inc.*, 377 U.S. 46, 57. Thus, the situs bills by legalizing strikes and the inducement of them on construction sites would also legalize the coercion and restraint flowing from "threats" to engage in such.

When comparing the protection afforded District 50 and its employers under Section 8(b)(4)(B), as it now exists, with the protection available under Section 8(b)(7), two things must be taken into account—(1) the conduct prohibited, and (2) the objects for which such conduct is proscribed.

Taking the second point first, Section 8(b)(7) has very limited proscribed objects, namely, forcing an employer to recognize a union or forcing employees to select such as their representative. The proscribed objectives of Section 8(b)(4)(B), on the other hand, are sweeping. That section proscribes all prohibited secondary conduct where an object is to compel one person to cease doing business with, or handling the products of, another person, regardless of the merits of the primary dispute.⁴ See *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 686.

The first question, then, is whether, if Section 8(b)(4)(B) is amended as proposed, District 50 and its employers will be adequately protected from secondary boycotts on construction projects by the limited proscribed objects of Section 8(b)(7)? The answer is no.

District 50's experience over the years has been that the object of certain unions has not been merely to tangle with District 50 as to whether it or their union should represent the employees of the contractor, which sort of dispute would come under the objectives proscribed by Section 8(b)(7). Rather, the thrust of their activities almost always has been to secure removal of the District 50 contractor and his replacement by one of their number. This objective is not banned by Section 8(b)(7), whereas prohibited secondary conduct for this objective is proscribed by Section 8(b)(4)(B). See *Pass Development, Inc.*, 154 NLRB 169, 175-176; *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 688-689.

Moreover, the prohibition of Section 8(b)(7) against picketing for recognition or threats to do so, the only conduct proscribed by this section, may be evaded by so-called "area standards" picketing at a construction site. See *Keith Riggs Plumbing & Heating Contractor*, 137 NLRB 1125; *Texarkana Construction Co.*, 138 NLRB 102; *Claude Everett Construction Co.*, 136 NLRB 321; *Calumet Contractors Association*, 133 NLRB 512.

This type of picketing, professing no recognitional desires but requiring compliance with their "standard wage and working conditions * * * set in contracts with [their] employers" (*Keith Riggs Plumbing, supra*, at p. 1127), and requiring conformance to their "standards of employment" (*Calumet Contractors, supra*, at p. 512), may be engaged in with impunity under Section 8(b)(7), even though such picketing induces work stoppages (*Texarkana Construction, supra*, at p. 104). Of course, in the context of other evidence showing an organizational or recognitional desire, "area standards" picketing would be held to be a violation of Section 8(b)(7). See *Fisher Construction Co.*, 149 NLRB 1629; *Penny Construction Co.*, 144 NLRB 1298.

Nonetheless, if Section 8(b)(4)(B) is amended as proposed, without the qualifying language contained on Congressman Kee's H.R. 4589, these unions could picket a job and shut it down to compel cancellation of a contract with a District 50 contractor by the simple device of carrying picket signs reading "we want John Doe, a District 50 contractor, off this job", or, without more, reading "John Doe does not conform to our working conditions and employment practices". Section 8(b)(7) would stop neither. See *Pass Development, supra*.

As to the conduct proscribed, more importantly Section 8(b)(7) only prohibits picketing, and threats of such. If one of the proposed bills without the qualifications contained in Congressman Kee's H.R. 4589 were enacted, these unions would be free, even for a recognitional objective prohibited by Section

⁴For the purposes of this analysis I am disregarding such exceptions as "farmed out struck work."

8(b) (7), in respect to one of District 50's contractors, to—

1. Strike secondary contractors and subcontractors;
2. Appeal to the employees of secondary contractors and subcontractors not to work;
3. Threaten secondary contractors and subcontractors with strikes or work stoppages.

It is, therefore, clear that the objections of District 50 to H.R. 100 and similar bills are justified, and that the modification contained in Congressman Kee's H.R. 4589 is required. Section 8(b) (7) does not, in any sense, provide the protection that District 50 now has under Section 8(b) (4) (B).⁵

Respectfully submitted.

WINTHROP A. JOHNS.

Mr. THOMPSON. As you know, Representative Kee was to be here this morning to introduce you. He was unavoidably called out of town. I assure you, Mr. Moffett, we will give consideration to your views and the views of all the witnesses.

Mr. Ashbrook?

Mr. ASHBROOK. No questions.

I would observe that seems to coincide with a recommendation of Secretary Shultz when he appeared the other day to make it perfectly clear that the position of the Department of Labor is that a bill should not be passed which would allow one union to picket on the basis of representation, for various rights, of other unions, which seems to coincide perfectly with what you have said.

Mr. MOFFETT. We believe that this legislation should be given a lot more consideration.

Mr. ASHBROOK. Thank you.

Thank you, Mr. Chairman.

Mr. THOMPSON. Mr. Ruth?

Mr. RUTH. No questions.

Mr. THOMPSON. Thank you very much, Mr. Moffett.

Our next witness is Mr. S. James Campbell, executive vice president and secretary-treasurer, Harry T. Campbell Sons' Corp., Towson, Md., representing the Associated Builders and Contractors, Inc.

Mr. Campbell, we would appreciate it very much if you would summarize this statement and have it put in the record in full.

It is quite lengthy.

Mr. CAMPBELL. I will attempt to do that, Mr. Chairman. It is a little more difficult, but in deference to your wishes I will try to shorten it where I can.

⁵ Section 8(b) (4) (C) also has been mentioned as a possible protection to District 50 against secondary activities by certain other unions on a construction site designed to force District 50 contractors off the job. However, this section proscribes only conduct to compel an employer to recognize or bargain with one union when another union has been "certified" under the provisions of the National Labor Relations Act as the representative of the employees involved. It does not prohibit conduct to force a disfavored employer off the job. In this regard, because of the relatively short duration of construction projects and the occasional nature of employment in the construction industry (see *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, vol. I, pp. 423-424), elections and certifications under the National Labor Relations Act are seldom sought. More frequently, reliance is placed on pre-hire agreements authorized by the provisions of Section 8(f) of the National Labor Relations Act. Moreover, Section 8(b) (4) (C) is subject to the same defect as Section 8(b) (7) in that its provisions may be evaded under the guise of so-called "area standards" picketing. See *Calumet Contractors Association, supra*.

**STATEMENT OF S. JAMES CAMPBELL, EXECUTIVE VICE PRESIDENT
AND SECRETARY-TREASURER, HARRY T. CAMPBELL SONS' CORP.,
ASSOCIATED BUILDERS & CONTRACTORS, INC.; ACCOMPANIED BY
WILLIAM B. BARTON, GENERAL COUNSEL, ASSOCIATED BUILDERS
& CONTRACTORS**

Mr. CAMPBELL. I would like to introduce my associate, Mr. William B. Barton, general counsel to the Associated Builders & Contractors, and note that the Associated Builders, or ABC, as it is called, is a national organization with some 2,500 member firms, and 19 chapters, in approximately 20 States. We are very appreciative of the opportunity to appear before your committee today and present our views.

I think the points we have brought forth, many of those points, have been very well described previously, and we can summarize and emphasize certain of the points we think paramount this year as compared to previous years.

Perhaps the most important is the constant spiraling in construction wages. I think it behooves the committee to try to search behind why the construction industry has spun so far out in front of all other industry, far beyond the productivity increases. We are of the firm belief that even the present problems of picketing on a construction site, or perhaps the threat to picket, are very much a cause of this race in wage increases.

I think the passage of H.R. 100, our association believes that the passage of H.R. 100, would only further increase an already very serious problem in the construction industry, as so well outlined in statements given prior to mine. I don't think that inflationary spiral can be taken at all lightly and certainly nothing should be done to further aggravate the problem.

Another problem that has been touched on, which we think is perhaps much more current this year than in previous years, is the effect passage of H.R. 100 would have on the ability to employ a larger share of our minority races. It is not necessarily an opinion of ours, that you should take as fact; but it is certainly one voiced by many responsible people, that there are certain restraints in the construction industry against bringing in minority races. The problem of seniority, and other problems inherent in union operations, the problems of long apprenticeship training periods, do not lend themselves to opening more doors to minority races.

This will be particularly important in our rebuilding of the urban centers.

Again I think H.R. 100, which will give all-increasing powers to the unions and to their ability to organize, will at the same time close the door on many opportunities that might otherwise be afforded in this construction industry.

We might also point out, I believe, an item not mentioned previously in testimony this year—I am sure it has been mentioned in previous years—that the last official record we have, which is for 1966, shows there are some 1,300 secondary boycott cases before the courts. I am sure it is not necessary to remind the committee that if there are 1,300 cases before the courts those of us in the industry are well aware of the fact that there are many, many thousands more of threatened

secondary boycotts that achieve the purposes that these illegal secondary boycotts had hoped they might achieve when we went to court.

Don't be fooled by the fact there are only 1,300 secondary boycott cases before the NLRB. It is the threat of the secondary boycott that in many, many cases does the jobs the union wants to do, and in many cases there are threats of illegal activity, as would be a secondary boycott.

This is particularly true of suppliers. It is obvious that subcontractors have certain protections under Taft-Hartley. It is further obvious that suppliers cannot be included in a "hot cargo" contract. But unions can, by threatening a secondary boycott, control suppliers on a construction site to just those they prefer, which in these cases would be union suppliers.

I don't think these points very necessarily have been brought up before. And if you pass H.R. 100 you can be sure the unions will take everything they are then given which further broadens their ability to picket a jobsite; and they will again test the law that much further.

Just as they have added 1,300 known NLRB cases to the present law, there will be many, many more thousands of cases where they will test the law even further.

I must emphasize, though I know it is repeating, and I think this may be the basic point of difference in understanding in the construction industry, that a primary employer being picketed by a union presents a situation where that union is treated just as fairly as an industrial union. If it is true—if his true problem is with that primary employer the Moore-Drydock language and the reserve-gate technique give that union every fair right it has. It matches it with industrial unions.

And it is important to point out that the unions themselves, by their very craft orientation, point up the fact that on a construction site there are evidently different employers that control different sets of wages, and they are not one and the same.

I think the primary point of disagreement is whether it is fair. We firmly believe Moore-Drydock is very fair to the unions. The courts and, I think, Congress have realized Moore-Drydock treatment is necessary. We feel if the true problem is with the primary there is very fair treatment under Moore-Drydock.

If they have motives directed at other than with the primary, which is often the case, such as getting a nonunion contractor off the job, keeping off the job a nonunion supplier, the Moore-Drydock case standards do not enable them to put pressure on the secondary employers. If they want pressure on a primary we feel they are well protected.

I think that would cover most of the points we are attempting to point out.

District 50 has been represented, as we have pointed out in our testimony and our statement. I might read my concluding statement for the record.

H.R. 100 is an ancient perennial that should again be sidetracked by Congress. It is a throwback to the 1930's when the national labor law was written to assist unions at every turn rather than considering the rights and welfare of the general public, the rank-file employee, and business.

By restoring unlimited secondary boycott picketing power at construction sites, the 18 already-favored building trades unions of the AFL-CIO would soon be able to crush the last remaining competition District 50, UMWA, force the complete unionization of all construction workers, and give union officers control over products and construction techniques. The product boycott, which once again is possible because of the Supreme Court's "work preservation" theory, would be freely permitted at all sites of construction.

H.R. 100's construction to more power for a major segment of organized labor would result in more restrictive labor practices, inflated wage demands, and more costly fringe benefits in an industry already leading all others in spiraling wage costs, that would hamper housing and commercial construction throughout the Nation, and continue to feed the extremely inflationary building costs.

The Associated Builders & Contractors are opposed to H.R. 100 and any other legislation that would enlarge the secondary boycott authority of any group be it union or management, and therefore urges the House Education and Labor Committee not to take favorable action on the bill.

ABC recommends that H.R. 100 or any similar version not be reported out of the committee.

The cost H.R. 100 would add to the construction industry is going to be borne most heavily by the Federal Government in its construction. It builds more projects than any other one employer, and the cost in inflation that would result from H.R. 100 would be borne directly by the Government, and therefore by the taxpayers.

Thank you very much.

MR. THOMPSON. Thank you, Mr. Campbell. We are very appreciative of your summary which, incidentally, was beautifully done. We do have your full statement and assure you we will give it our full attention.

(The statement referred to is as follows:)

TESTIMONY BY S. JAMES CAMPBELL, EXECUTIVE VICE PRESIDENT AND SECRETARY-TREASURER, HARRY T. CAMPBELL SONS' CORPORATION, TOWSON, MARYLAND, FOR THE ASSOCIATED BUILDERS & CONTRACTORS, INC.

My name is S. James Campbell. I am Executive Vice President and Secretary-Treasurer of the Harry T. Campbell Sons' Corporation, Towson, Maryland. I am appearing before your subcommittee on behalf of the members of the Associated Builders & Contractors, Inc. which organization I have served for many years, and of which I am a past president and active member of their Legislative Committee.

The Associated Builders and Contractors appreciates very much this opportunity to express its views to this committee in opposition to H.R. 100.

Previous Congresses have recognized that H.R. 100-type legislation would create more labor-management controversy rather than bring greater labor peace; that it would further raise construction costs, already dangerously high in a period of rapidly expanding inflation in which the construction industry has outpaced all others; and that it would permit union officers to limit the freedom of choice of builders, contractors and workmen and further restrict the ability of minority workers to gain employment in the construction field. H.R. 100 would encourage product boycotts whereby certain varieties of products, prefabricated products or goods produced in a certain manner would be kept from the market; general contractors would lose the freedom to select any subcontractor they wished and subcontractors would be pressured to refuse to accept work from certain general contractors; and construction workmen would lose the legal right to refrain from joining a labor union.

How would H.R. 100 that appears to be a mere amendment to one section of the Taft-Hartley Act, create so much turmoil, controversy and restriction?

H.R. 100 would restore the full power of the dreaded secondary boycott at all sites of construction, repair, or alteration. It would turn back legislative clocks to the 1930s, when labor law was a one-way street moving in the direction of unrestricted authority and power for unions. In both 1947 and 1959 Congress amended some of the one-sidedness of the 1935 Wagner Act by seeking to outlaw all secondary boycotts. H.R. 100 would reverse this trend toward the protection of innocent parties in labor disputes and union membership drives, and make all targets.

H.R. 100 is a straight secondary boycott power play. Until 1947 both primary and secondary boycotts were legal. The 1947 Taft-Hartley Act maintained the legality of primary boycotts but sought to stop secondary boycotts. In secondary boycotts, the technique of the union is to threaten to involve a secondary party—a neutral employer or neutral employees of another business—to help the union win its grievance or organizing campaign.

In short, a secondary boycott pressures the neutral party to take the union's side or find himself a target of union economic pressure. In other words, the union tells the neutral: "Stop doing business with your neighbor, or we will see that no one does business with you."

It is this pressure that H.R. 100 would legalize at all construction sites. In reality this amounts to about 75 per cent of the secondary boycott charges filed during a year with the National Labor Relations Board. NLRB statistics reveal that in 1966 there were 1,295 secondary boycott cases filed. Of this amount 62 per cent were charges against the 18 Building Trades unions, and 14.2 per cent were charges against the Teamsters union. Many of the Teamster charges are believed to involve construction; thus, about 75 per cent of all of the NLRB secondary boycott cases stem from the construction industry. Amending the law, as H.R. 100 would do, would be an almost complete restoration of the union secondary boycott weapon.

In detail the 1966 NLRB figures show that the Electrical workers (IBEW) were involved in 12 per cent of the secondary boycott charges; that the Carpenters with 10 per cent; the Plumbers 8 per cent; the Operating Engineers 6 per cent; the Laborers 5.7 per cent; and other building trade unions in lesser percentages.

National Labor Relations Board Annual Reports disclose that since the adoption of the Landrum-Griffin Act in 1959 and the closing of most of the secondary boycott loopholes, the number of secondary boycott cases filed have more than doubled the pre-Landrum-Griffin years when protection against secondary boycotts was extremely weak. A table follows:

<i>Secondary boycott cases</i>	
Fiscal year:	Number
1958.....	527
1959 ¹	657
1960.....	644
1961.....	815
1962.....	1,070
1963.....	1,142
1964.....	1,233
1965.....	1,256
1966.....	1,206
1967.....	1,329

¹ Landrum-Griffin amendments took effect in the autumn of 1959.

The importance and necessity of secondary boycott protection is obvious. If H.R. 100 were enacted at least three-quarters of the more than 1,300 cases would permit no relief. Labor controversies and their victims would be greatly increased.

H.R. 100 Means More Power for Giant Unions

Thus the real purpose of H.R. 100 is to restore unlimited secondary boycott power to the unions of the construction industry. How would this power be used? Its primary use would be to kill off small or independent unions that in some areas offer competition to the giants of the AFL-CIO Building Trades department, and to organize unorganized construction craftsmen. A secondary, but

highly important use would be to add the secondary boycott arrow to the present union power quiver and make it easier for the building trades unions to win more contract demands and grievances.

Essentially H.R. 100 is a device to bring even greater power to the already powerful construction unions. Of the 18 building trades unions, three are in the top ten of the country's biggest unions. The unions and their membership are: IBEW (Electrical workers) ranks fourth with 875,000 members; Carpenters, sixth with 800,000; and Laborers, eighth with 474,529.¹

One of the largest independent unions is District 50, UMW. It is a competitor in many areas of the nation with the AFL-CIO Building Trades. District 50 opposes H.R. 100 because it knows the AFL-CIO would use it to gradually put District 50 out of the construction union field. It has made its opposition known in a telegram to President Nixon.²

A careful reading of H.R. 100 reveals that it would make all non-AFL-CIO affiliated unions fair boycott game. Lines 9 to 12 of Page 2 read: "and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry."

This is license to take on the construction unions of District 50; thereby causing jurisdictional havoc for business, contractors, and the employees (both union and non-union) who become caught in the organizer's web.

This same ingenious language also protects the industrial type of union of the old CIO. It permits a factory to use its unionized employees on construction jobs at the factory site without interference of secondary boycott picketing from the old AFL building trade or craft-type unions. This is necessary in order to obtain the support of the industrial unions within the big AFL-CIO federation.

Present Safeguards Would Be Lost

Enactment of H.R. 100 would broaden the effect of strikes and organizational picketing to involve hundreds of additional workmen and scores of additional business firms. It also would broaden the location, place, or situs of a construction industry labor dispute. The courts have been very careful to preserve the important right of a union to strike its primary employer at a construction site, but in the equally important interest of limiting or narrowing labor disputes to only those parties directly involved, the courts have done so by approving guide lines in two areas.

One of these is the reserved gate strategy, a tactic whereby secondary employers and their employees are permitted to use an exclusive gate or entrance to a work site and are not required to use the same entrance as the employees of the primary employer who is a target of the union. The union, under the reserved gate doctrine, must confine its picketing and activities to the gates used by the company with whom it is in dispute. This confines the union's activities to the immediate parties involved in the labor controversy and does not involve neutrals; thereby contributing to greater industrial peace.

The adoption of H.R. 100 would destroy the reserved gate doctrine and permit an unlimited extension of controversy. This, of course, is the goal of the construction unions; the more business firms under pressure the sooner they believe their demands will be met.

The adoption of H.R. 100 also would destroy the second area of guidelines; namely, the Moore Drydock safeguards created by the NLRB and approved by the courts. This 20-year-old decision was aimed at minimizing the secondary boycott pressure of a picket line. It is applied to all unions, construction or industrial. The decision permits common situs picketing (picketing at a place of common employment), if certain ground rules are followed. They are:

(1) The picketing must be limited to times when the employer or contractor with whom the union has its dispute is at work at the common site.

(2) The picketing must be limited to times when the dispute is on the secondary or neutral employer's premises.

(3) The picketing must be limited to places reasonably close to the place where the primary employer (the union target) has his employees at work.

(4) The picket signs must clearly show that the dispute is with the primary employer. There must be no implication that a neutral is a party to the dispute.

¹ Directory of National and International Labor Unions in the U.S. 1967, BLS Bulletin 1596, page 59.

² Bureau of National Affairs, Daily Labor Report 49, March 13, 1969, page A-4.

These protections, devised in the interest of industrial peace, would be washed away in the wake of H.R. 100.

An immediate effect would see pickets and subsequent work stoppages on all parts of construction projects under attack by a building trades organizer. Under the present law, building trades pickets are limited to the place of the dispute within a construction site. If H.R. 100 were passed, the complete site could be picketed. For example, if the Painters union had a dispute with a painting subcontractor on a huge home construction project covering many acres, the union would be limited to picket the closest entrance to where the painters are at work. If H.R. 100 were adopted, the Painters could picket the full site, thereby shutting down the complete project instead of possible shutting down the limited area of the painting.

It is the Moore Drydock principles that point up the falsity of the building trades argument that construction unions do not have equal picketing rights with factory unions. The construction unions base their argument on their own erroneous view of the facts. They contend that all contractors at a construction site, be they generals or subs, are really joint venturers or one big employer. This is far from the truth. The general contractor and each subcontractor at a construction project is a completely separate and distinct legal entity. Their dealings with each other are at arms length on a cold, hard business basis. The subcontractors compete against other subs in the same trade and they each negotiate independently the wages and working conditions of their own employees with their own separate craft union. The very makeup of the construction unions' many diverse craft unions represented on a given construction site in itself clearly illustrates the secondary employer status existing on every site.

This self-serving thesis of one big employer at a construction site as presented by the unions was rejected by the United States Supreme Court nearly twenty years ago in the Denver Building and Construction Trades Council decision. To overturn this decision and to fictionalize the facts is a purpose of H.R. 100.

Preferential Treatment for the Building Trades

The Building Trades unions have long sought special consideration and legislation not given to their brothers in the organization table of American unions. Adoption of H.R. 100 would overturn both the Moore Drydock principles and the Supreme Court's Denver Building Trades decision. The immediate effect would be to grant further special favors to the construction unions.

The construction unions were provided preferential treatment, not enjoyed by other unions, in the 1959 Landrum-Griffin amendments to the Taft-Hartley Act. For example: While other labor organizations are required to wait 30 days before demanding that an employee join their union or be forced to stop working, the building trades need wait only seven days before demanding forced membership. The construction unions also were given the privilege of seeking "hot cargo" secondary boycott contracts for work done at a construction site. In such contracts, the union may demand that an employer agree in advance not to do business with other employees the union may not approve. A third special preference allows construction unions to seek to bargain for "pre-hire" clauses in their collective bargaining agreements, meaning that an employer can be asked to agree to the discriminating practice of recognizing a union as the bargaining agent for future employees he has not yet hired. Still another privilege permits a construction union to demand hiring preferences based on seniority of employment in an industry or in a geographic area.

It is easy to recognize that all of these special legislative favors are designed to give construction unions of the AFL-CIO the control over employment and jobs in the world of construction. Despite these advantages, the building trades want more. They ask for the right to bring economic pressure on neutral employers and employees through secondary boycotts at all sites of construction. This would be the final link in the monopoly chain. The unions would thus control employment, the products used, and the work done.

Minority Race Employment

The belief that minority races are not given full employment opportunities by the construction unions is wide spread. This ability that would be granted to a union to close down a complete construction site, particularly an urban renewal site, would further restrict the abilities of minority employees to gain employment in the construction field, which is already being denied them to a great extent.

H.R. 100 and Defense Installations

The effect of H.R. 100 is so tremendous that its authors felt the federal government, itself, needed protection from its consequences. H.R. 100 contains a special 10-day grace period before construction unions would shut down America's military defense capabilities. Page 2 of the bill provides that missile sites and installations of the Army, Navy and Air Force have 10-days to come to terms with the AFL-CIO affiliates or would be shut down by a secondary boycott picket line.

But even this limited protection would not stop the bill's effect upon defense production. The bill disregards the production of other military hardware, less glamorous than missiles, and the production of supplies for the military, such as infantry rifles, trucks, shoes, parachutes, or food which could under certain circumstances become equally critical. H.R. 100 appears to be more concerned with maintaining the security of the picket line than the security of the battle line.

Product Boycotts Now Possible

If there was any need in the past to reduce the legislative safeguards against secondary boycotts as sought by the construction unions, the 1967 Supreme Court decision in the *National Woodwork Mfgs. Association* case (386 U.S. 612) has lessened such a need considerably. In a 5 to 4 decision the Court permitted the Carpenters union to impose a secondary boycott against prefabricated doors, holding such activity was beyond the protection of the law so long as the union could show its purpose was merely to preserve work formerly performed by its members. Thus the court sanctioned this type of product boycotts at construction sites.

From the building trades' point of view, the National Woodwork case decision should make H.R. 100 less important to these unions, although still desirable to them. What is needed, however, is legislation not to weaken the present law but to correct the damage caused by the decision and a comprehensive amendment to prohibit all product boycotts wherever they occur.

Conclusion

H.R. 100 is an ancient perennial that should again be sidetracked by Congress. It is a throwback to the 1930s when the national labor law was written to assist unions at every turn rather than considering the rights and welfare of the general public, the rank-and-file employee, and business.

By restoring unlimited secondary boycott picketing power at construction sites, the 18 already-favored building trades unions of the AFL-CIO would soon be able to crush the last remaining competition (District 50 UMWA), force the complete unionization of all construction workers, and give union officers control over products and construction techniques. The product boycott, which one again is possible because of the Supreme Court's "work preservation" theory, would be freely permitted at all sites of construction.

H.R. 100's contribution to more power for a major segment of organized labor would result in more restrictive labor practices, inflated wage demands and more costly fringe benefits in an industry already leading all others in spiraling wage costs, that would hamper housing and commercial construction throughout the nation, and continue to feed the extremely inflationary building costs.

The Associated Builders and Contractors are opposed to H.R. 100 and any other legislation that would enlarge the secondary boycott authority of any group be it union or management, and therefore urges the House Education and Labor Committee not to take favorable action on the bill.

ABC recommends that H.R. 100 or any similar version not be reported out of the committee.

Mr. THOMPSON. Mr. Dellenback, do you have any questions?

Mr. DELLENBACK. No. I am sorry I did not hear the full statement, being in another subcommittee. I appreciate very much hearing the portion of the testimony I have been able to listen to.

Mr. CAMPBELL. Thank you.

Mr. THOMPSON. Thank you, Mr. Campbell.

Our last witness for the day is Mr. Herbert Laube, vice president of the Singer Corp.

STATEMENT OF HERBERT LAUBE, SENIOR CONSULTANT, SINGER CO., CLIMATE CONTROL DIVISION; ACCOMPANIED BY JOHN Q. JENNINGS, EMPLOYEE RELATIONS CONSULTANT

Mr. LAUBE. Mr. Chairman—

Mr. THOMPSON. Mr. Laube, first I would like to say that Representative Stratton was here earlier, and he had to leave for another committee meeting. It was he who asked that you have this opportunity to testify.

On his behalf I welcome you here.

If you will, please identify the gentleman with you.

Mr. LAUBE. John Q. Jennings, my associate, is employee relations consultant to the Singer Co.

May I add, I am not a vice president of the Singer Co. But be that as it may, I will get to this.

Mr. Chairman, I have a short statement here so it will not take long.

Mr. Chairman, members of the Special Labor Subcommittee, I want to thank you for this opportunity to testify. My name is Herbert L. Laube. I live at 120 Windcrest Drive, Camillus, N.Y. I am past president of the Remington Air Conditioning Co., which is now a part of The Climate Control Division of the Singer Co., to which I am now acting as senior consultant.

This division manufactures heating equipment as well as air-conditioning equipment. However, I shall confine my observations to the Remington air-conditioning segment of the business, an industry with which I have been associated continuously for 45 years.

I am concerned not only about our business, but also about the increase in living costs. These have increased in March at the rate of 10 percent per year—over 10 percent per year—the greatest increase in any month since the Korean war. Contributing to this increase have been higher rents and construction costs for home, apartments, schools, hospitals, nursing homes, et cetera. Here is a specific example of why construction costs have been skyrocketing. I quote from the Washington Evening Star of April 21, 1969:

Philadelphia Plumbers get \$19,520-Annual-Pay Pact:

The 2,000 union plumbers in Philadelphia have negotiated a new contract which raises wage rates \$3.25 to a top of \$9.76 in May 1971, meaning an annual income of \$19,250 for a 40-hour week, including fringes.

The new agreement, reached over the weekend provides for an 85-cents-an-hour increase on May 1, another \$1.15 in 1970 and \$1.25 more in 1971.

The present pay is \$6 an hour in wages, plus 51 cents in fringes, including hospitalization, insurance and pensions. Earl G. DuBois, president of the Mechanical Contractors Association of Philadelphia, said he understands that Plumbers Local 690 intends to allocate part of the \$3.25 increase to fringes.

DuBois said San Francisco has negotiated an even higher pay for plumbers, noting pay and fringes there will go to \$10.65 an hour by 1972.

He said the new contract was reached "after a bitter discussion."

Incidentally, they got it backward up in the headline of this article. It is \$19,250. The headline has it as \$19,520.

Gentlemen, I submit that any union which now has the power to force pay increases of this magnitude needs no more power. To give such unions such added power, which, of course, is the objective of H.R. 100, would merely mean that all the people of the United States would be menaced by even higher costs for the construction work performed by such unions.

The public is already rebelling against such costs, as evidenced by repeated rejections of bond issues for schools, hospitals, et cetera. This is further confirmed by the need to subsidize housing for families with incomes in the five-figure category.

So much for my blanket objection to giving building trades unions—the highest paid workers in the world—more power to extract even greater concessions from the public, by way of employers, which is what secondary boycotts and situs picketing would encourage.

As for the business with which I am most familiar, I want to make the following points: We are unique in the air conditioning industry in that we are specialists. We specialize exclusively in providing a year around comfort for the occupants of apartment houses, hospitals, nursing homes, college dormitories, schools, and similar multiroom buildings. To serve this field we took advantage of postwar technological progress to create a new system of air conditioning. This system, unlike others, is completely factory assembled, adjusted, and tested. Complex electronic equipment is employed in this work. The same work could be and often is done in the field. But when this is the case, failure rates are from five to 10 times greater than when this work is done with proper facilities under closely controlled factory conditions. The net result of what we have developed is, therefore, that we have rolled back the cost of providing indoor living conditions, climate-wise, of higher quality and at lower cost, today, than were possible 20 years ago. This is only because we do in a factory work which, if done on the construction site, would: (1) cost more initially; (2) have a significantly higher failure rate; and (3) therefore, do a poorer job for the customer.

These advantages would all disappear if, as in cases involving prefitted doors, packaged boilers, and certain other air-conditioning equipment, any union should ever be able, by use of a secondary boycott or situs picketing, to force our factory assembled equipment to be shipped unassembled, or even worse, knocked down and reassembled uncontrolled and with improper facilities in the field by building tradesmen.

Gentlemen, my associates and I want to continue providing more living comfort per dollar for the occupants of the hospitals, schools, dormitories, nursing homes, and similar multiroom structures that we serve.

The building trades are known for their dynamic conservatism—their untiring efforts to stay the same. H.R. 100 would enhance the power of these unions to frustrate technological progress in general and our objectives in particular.

The biggest domestic problem facing our Nation today is skyrocketing living costs. We believe that H.R. 100 would accelerate this dangerous inflationary trend. I want to go on record, therefore, as being against this trend and against this bill or any other bill that would increase the already overwhelming power of the building trades unions.

Again, may I thank you gentlemen for the privilege of appearing before you.

Mr. THOMPSON. Thank you very much, sir.

I have no questions.

Mr. Dellenback?

Mr. DELLENBACK. No questions. I appreciate the testimony and the very practical thrust of what you are saying. You are making your point, I think, effectively and well. I think this is one of the factors that this committee ought to give very careful consideration to as it studies this bill.

I very much appreciate this testimony this morning.

Mr. LAUBE. Thank you, sir.

Mr. THOMPSON. Thank you very much.

This concludes hearings on H.R. 100.

Anyone wishing to file a statement for the hearing record may submit such statement to the subcommittee office by May 7, at which date the record will be closed.

(Whereupon, at 11:45 a.m., the hearing was closed.)

APPENDIX

(Statements From Proponents of H.R. 100)

STATEMENT BY GENERAL PRESIDENT S. FRANK RAFTERY, BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, AFL-CIO

The Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, representing over 205,000 members throughout the United States, vigorously supports H.R. 100 introduced by Congressman Thompson of New Jersey.

This proposed legislation, popularly referred to as the "Situs Picketing Bill", is designed to correct the inequitable restriction on union economic activity in the construction industry, which emanated from the Denver Building Trades decision of the National Labor Relations Board in 1949. The discrimination against the Building Trades is obvious; in the present state of the law, Section 8(b)(4) of the Taft-Hartley Act, enacted in 1947, has no application to the usual peaceful picketing of a factory or plant in a labor dispute; yet this same provision is interpreted in such a way as to prohibit peaceful picketing of a construction site by construction workers.

The latter activity may currently be labeled a "secondary boycott" by virtue of the fact that more than one employer is engaged on the construction site. Completely overlooked or ignored is the fact that joint contractor operations, totally interdependent one upon the other, is the way of life in the construction industry. To apply the traditional and technical view of separate employer entities in this context is patently absurd.

It is noted, in this connection, that the unique relationships between contractors and subcontractors in the garment industry were recognized by the Congress in the 1959 amendment to Section 8 (b) (4) of the Act. H.R. 100 seeks to secure the same recognition of the equally unique relationship between contractors and subcontractors in the construction industry.

Measures similar to H.R. 100 have been firmly supported by the Administrations of Presidents Truman, Eisenhower, Kennedy and Johnson. Indeed, for the past 17 years the situs picketing issue has received careful and exhaustive study by the Congress and the executive branch, and corrective measures have been increasingly favored by members of Congress on both sides of the aisle. Most regrettably, H.R. 10027, a bill identical to H.R. 100, introduced in the 89th Congress after being scheduled for floor action May 12, 1966, was withdrawn from the agenda in an undemocratic and unprecedented manner. The House did not have the opportunity to work its will.

During the 90th Congress this legislation was approved by the full House Education and Labor Committee. Then, the House Rules Committee failed to report the bill for House debate.

In a statement dated February 27, 1967, the AFL-CIO Executive Council pledged its "full and complete support" of the effort to attain passage of "situs picketing" legislation in this session of Congress. We of the Brotherhood of Painters pledge our full and complete support of this same effort. To that end, we urge this honorable Committee to conduct hearings on, and favorably report H.R. 100 as expeditiously as possible.

STATEMENT OF PETER FOSCO, GENERAL PRESIDENT, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

Mr. Chairman and Members of the Subcommittee: I want to express my appreciation to you today for the opportunity to appear here to testify on behalf of H.R. 100, as introduced by Representative Frank Thompson of New Jersey.

The Laborers' International Union is the fifth largest union in the AFL-CIO today. More than 400,000 of our 550,000 members are employed in all phases of the building, heavy, and highway construction industry. H.R. 100 directly affects their interests.

Rarely has an issue enjoyed so much bipartisan support as situs picketing legislation. I see no need to go into a long history of this support. It is well known by now that four previous Presidents have all supported legislation to restore to construction trade unions the right to peacefully picket at their place of employment.

But despite this wave of support, despite the fact that many members of Congress in both parties agree an injustice is now being suffered by workers in the building and construction industries and despite concerted efforts on the part of all these parties to secure passage of legislation to correct this inequity, building and construction tradesmen are still being denied a basic right.

H.R. 100 would remedy this problem. The bill's purpose is to reverse the rule laid down by the Supreme Court in what is known as the Denver Building Trades Case. In that 6-3 decision, the Supreme Court affirmed the NLRB in its literal and unrealistic interpretation of the statute. The Court held that a labor organization in the building and construction industry was effectively prohibited from engaging in legitimate concerted activities at the employees' place of employment.

Although employees working at a factory or retail store have a protective right under the law to peacefully picket at the site of their employment, the Denver Building Trades Ruling has effectively withdrawn that right from employees in the building and construction trades industry. The result is that construction employees are prohibited from peacefully picketing at the site of employment to further their legitimate interests over wages, hours, and other conditions of employment.

Section 8(b)(4) has been construed as forbidding building and construction unions from engaging in concerted economic activities at the common employment situs where an "object thereof is forcing or requiring any person to cease doing business with any other person."

On a typical building and construction job, a general contractor may be under a collective bargaining agreement with one or several unions. Although the contractor is generally responsible for the entire project, he will often subcontract various phases of the overall project to specialty contractors.

Any one or several of these contractors may be operating under substandard conditions—low wages, excessive overtime at straight time rates, failure to provide adequate safety measures or equipment, etc. If one or several of the unions involved on the project were to erect a picket line at the construction site protesting these substandard conditions, the NLRB would apply the Denver Building Trades principle and hold that such picketing is a secondary boycott in violation of Section 8(b)(4).

The basis for this decision would be the literal reading of the foregoing statutory language finding that "an object" is to cause the union general contractor "to cease doing business" with the substandard contractor. Yet, it is obvious that the situation just described is not the true secondary boycott situation the law was designed to prohibit.

The purpose of the secondary boycott provisions of the statute is to protect the innocent third person who is unconcerned with and should not be a part of a dispute between a principal employer and his employees. In terms of the example previously cited, and the everyday realities of the industry, it cannot be said that the substandard subcontractors engaged on an integrated construction project are "innocent third person."

A construction project of any size these days involves a large number of contractors. No longer does one general contractor perform all of the work with his own complement of employees. A job of any size today must involve the integrated and coordinated efforts of many employers.

The irony of the law is this: If a construction project today was being performed by only one employer with his regular complement of employees, these employees could protest the existence of substandard wages, hours, or other conditions which that employer permitted to prevail on the job. The mere addition of a subcontractor, who permits such substandard conditions to exist, should not make any legal difference since, as a practical matter, the legitimate concern of all the employees at the common site of employment is the same. Yet, the Supreme Court majority "deferred" to the NLRB's expertise in unrealistically "preserving" the legal identity of every contractor on the project. The true picture was stated by Mr. Justice Douglas in a dissenting opinion in the Denver Building Trades Case:

"If the concerted activity engaged in by the Denver Building Trades Council is forbidden, the Taft-Hartley Act makes the right-to-strike, guaranteed by

Section 13, dependent upon fortuitous business arrangement that has no significance so far as the evils of the secondary boycott are concerned. I would give scope to both Section 8(b)(4) and 13 by reading the restrictions of Section 8(b)(4) to reach the case where an industrial dispute spreads from the (common situs job) to another front."

H.R. 100 would eradicate this unrealistic interpretation in the Denver Building Trades Case. The building and construction industry does not ask for any special treatment. It asks only for equal treatment—restoration to construction employees of the right to engage in a protected and concerted activity at the site of employment.

None of those employers involved on a construction job of any size is a "neutral" or "disinterested" third person. The facts of life in the building and construction industry readily illustrate this point. The different needs and demands of this vast industry are met on a coordinated basis everyday in the construction of bridges, apartment buildings, factories, roads, or other facilities.

With the migration of individuals from the city to the suburbs, we need only gaze over our own back yards to see the techniques and complexities of construction first hand. What we see are diverse types of equipment placed in the hands of men of different backgrounds, utilizing each employee's different skills. Yet there is an absence of disorder. Through the coordinated efforts between and among the general contractor and his numerous subcontractors, the different skills, phases and demands of construction are dovetailed to form a smooth working integrated team.

The achievement of this well-oiled machine does not just happen by chance. A grand design for a particular project may originate in the architect's plan and at the same time the owner and the architect may meet with the general contractor and others to map out the manner in which the job is to progress.

Factors, such as: the location of suppliers, materials, the deadline for completion of the project, the quality of workmanship needed, the availability of skilled workmen in the locale, and the reliability of subcontractors will all be weighed before the project is started. Obviously, construction projects involve the blending and coordinating of employers and employees of all types. I repeat, none involved in this effort can be a neutral or third party.

Among the unfortunate facts of life besetting employment in the construction industry is the lack of permanency with any one particular employer or any assurance of year-round employment in general. Although a construction project is a complex undertaking, it is essentially a seasonal event. The workers must go where the project is located and they must do so knowing that when the project is completed they will be released from their employment and they will have to seek employment elsewhere.

This intermittent pattern of employment in the construction industry not only makes organizing extremely difficult for the construction union but also points out the necessity for unions to be able to insure the wages, hours, and other conditions of employment which it has established in a given area are preserved for the construction employee as he goes from project to project.

Moreover, because of the short-term employment associated with the construction industry, the NLRB election procedures have proved unadaptable in resolving questions concerning representation—both before the passage of Taft-Hartley and since. The reason we bring this up is merely to illustrate the types of problems which exist because of the unique nature of construction industries.

These problems, however, should not be used to justify further burdening of construction employees prohibitions of 8(b)(4). The elimination of the rule in the Denver Building Trades Case will be a major step toward solving these problems to allow construction employees to act in concert toward the end of protecting their interests to the extent possible in an always hazardous industry.

We do not have to tell members of Congress about the unique aspects of the building and construction field. The unique status and needs of the building and construction employee, employer, and union were recognized by Congress when it enacted Section 8(e) and 8(f) of the Landrum-Griffin Act. Section 8(e) sought to alleviate some of the industries problems with regard to subcontracting, and Section 8(f) was an attempt to overcome some of the aforementioned election deficiencies by allowing the execution of the so-called prehire agreement.

Indeed, the casual short-term nature of employment in the industry was so clearly understood by Congress that provisions were made to inserting a clause in collective bargaining agreements to require membership after the 7th day rather than the 30th day following the beginning of employment. H.R. 100, there-

fore, is neither new nor radical in its design. It is an honest, straightforward attempt to overcome the unfortunate results of an erroneous interpretation of the statute.

It is for these reasons that we strongly urge the Congress to adopt H.R. 100 and restore to building and construction unions a right so long denied them.

Mr. Chairman, Members of the Subcommittee, I want to thank you for the opportunity to appear here today to express our views on this subject of vital interest to our members.

STATEMENT OF CHARLES H. PILLARD, INTERNATIONAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

On behalf of the 900,000 members of the International Brotherhood of Electrical Workers, AFL-CIO, I appreciate the opportunity to state our support for H.R. 100, which would reverse the ruling in the *Denver Building and Construction Trades Council* case, 341 U.S. 675, and exclude from the definition of secondary boycotts under the National Labor Relations Act common situs picketing at building and construction sites.

In supporting H.R. 100, I wholeheartedly endorse the statement before this Subcommittee of C. J. Haggerty, President of the Building and Construction Trades Department, AFL-CIO. President Haggerty's statement sets forth in some detail both the legal and practical considerations revealing the need for passage of H.R. 100. With respect to the latter, President Haggerty listed a number of prevailing wage determinations under the Davis-Bacon Act currently in effect in certain areas of the country. For electricians in particular, those determinations showed such prevailing rates as \$2.00 an hour in Thomasville, North Carolina, and Blackville, South Carolina, \$1.88 in Greenville, Georgia, and \$2.50 in Samson, Alabama. It is apparent, therefore, that H.R. 100 is necessary to defeat the attempt of open-shop contractors to continue to capitalize on the *Denver Building Trades* rule in order to pay their employees at rates far below those prevailing in the larger metropolitan areas where organized labor has been able to gain a relatively equal position of bargaining power with employers. In fact, it should be recalled that the *Denver Building Trades* case itself arose from the fact that the nonunion electrical contractor there paid his electricians at a rate of \$1.62½ an hour at a time when the Union scale was \$2.05. The non-union contractor there thus enjoyed a wage advantage of some 42½ cents an hour for each man employed on the job. That is what the *Denver* case was all about, and that is what the current opposition to H.R. 100 is all about.

The effects of the *Denver Building Trades* rule over the years have been widespread and uniformly adverse to the conditions under which employees in the construction industry must work. The International Office of the IBEW receives reports almost daily from its International Vice Presidents, International Representatives and Local Union Business Managers of the difficulties experienced in attempting to combat the efforts of organizations which are dedicated to the perpetuation of substandard wages and working conditions. It is no coincidence that many of these organizations have appeared before this Subcommittee to oppose H.R. 100. It is interesting to note, for example, that the Carolinas branch of the Associated General Contractors has already entered an appearance objecting to passage of this remedial legislation. And, as I have indicated above, some of the current prevailing wage determinations issued by the U.S. Department of Labor in North and South Carolina show electricians—one of the most highly skilled crafts in the construction industry—receiving a wage rate in those states of \$2.00 an hour, just 40 cents above the minimum wage.

As President Haggerty's statement before this Subcommittee indicates, the difficulties under the *Denver Building Trades* rule have become greater still under the more recent rule announced by the National Labor Relations Board in the *Markwell & Hartz* case, 155 NLRB 319, enforced 387 F. 2d 79 (5th Cir. 1967). Under that decision, the National Labor Relations Board held, by a 3-2 vote, that contractors at construction sites could use the device of a "reserved gate" to restrict the extent of lawful primary picketing at such projects well beyond the limits previously existing under the *Moore Dry Dock* doctrine announced by the Board in 1950. President Haggerty has indicated in his statement the inequitable and discriminatory effects of the *Markwell & Hartz* rule, and no further purpose would be served by repeating those statements here. As was true in the *Denver* case, however, it is instructive to look beyond the legal ruling into the facts giving rise to the basic dispute. Exhibits in the *Markwell & Hartz*

case and an applicable Department of Labor wage determination revealed that rates paid by Markwell & Hartz to its employees under a collective bargaining agreement with a local union of District 50 of the United Mine Workers were well below those determined by the Department of Labor to be prevailing in the area. It is hardly surprising, therefore, that District 50 has also appeared before this Subcommittee expressing opposition to H.R. 100.

In sum, the IBEW urges passage of H.R. 100 as introduced. I note in this regard that the Bill as drafted, guaranteeing the right to engage in situs picketing in the building and construction industry, already contains a number of limitations on that right which assure that the public interest has been adequately protected. Indeed, it is my understanding that the safeguards contained in the Bill as written actually exceed those asked by President Eisenhower in 1959 in the form of S. 748, introduced on behalf of his administration. It is the position of the IBEW, therefore, that this legislation is necessary to correct an inequity in existing law, to protect the wages and working conditions of construction workers in areas where they have been denied protection as a result of the *Denver Building Trades* rule, and to assure that fair contractors will not be undercut in their business dealings by contractors who seek to gain an unfair competitive advantage at the expense of their employees. For all of the above reasons, the IBEW urges that the Subcommittee favorably act upon H.R. 100 as presently drafted.

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA,

Washington, D.C., May 6, 1969.

Mr. FRANK THOMPSON, Jr.,

Chairman, Committee on Labor and Education, House Office Building, Washington, D.C.

DEAR MR. THOMPSON: I am advised that you have kept open the record on the hearing on your Bill, H.R. 100, known as the common situs picketing bill, which amends Section 8(b) (4) of the Labor Management Relations Act of 1947. This statement is submitted by me as General President of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. I request that it be made part of the record in the hearing of H.R. 100. The United Association strongly urges the adoption of H.R. 100 without amendments.

The United Association is an international labor organization comprising some 706 local unions with a membership of approximately 297,398 journeymen plumbers, pipefitters and sprinkler fitters who are primarily engaged in the building and construction industry.

Journeymen plumbers, pipefitters and sprinkler fitters are skilled craftsmen who serve a five year apprenticeship in order to qualify as journeymen to work on construction projects. These craftsmen are engaged in construction of chemical plants, atomic energy facilities, oil refineries, power generating plants and other highly complicated construction and engineering projects as well as residential and commercial construction.

The leaders of both political parties of this country have committed themselves to securing an amendment to the Labor Management Relations Act of 1947 to avoid the stifling effects of the *Denver Building Trades* decision of the Supreme Court and to permit common situs picketing by building trades unions when a non-union contractor comes on a construction job. Such an amendment is needed now!

The Moore Dry Dock doctrine of the NLRB which permits common situs picketing under certain proscribed conditions of which you are familiar, I am sure, is really ineffectual since it is extremely difficult for a union to avoid running afoul of these rules. Furthermore, the Board and the Courts have emasculated meaningful picketing of a construction project by further limiting the scope of common situs picketing under the Moore Dry Dock rules.

For example, you are undoubtedly aware that under *Markwell & Hartz v. NLRB*, 387 F. 2d 79 (5th Cir., 1967), cert. denied — U.S. —, 20 L.Ed. 2d 653 (1968) the Court held that a general contractor on a construction job can open a "separate gate" for the use of the contractor that the union is picketing and the union must then limit its picketing to that gate or run afoul of Moore Dry Dock. This is an unfair and unjust application of the Moore Dry Dock criteria to a union comprised of construction workers and demonstrates that Moore Dry

Dock really is of no benefit to such workers in trying to preserve their hard fought-for conditions and wages. Instead of permitting picketing, Moore Dry Dock is being used to strangle construction unions.

The "separate gate" principle has recently been extended to a "separate hours" situation—again restricting the union's right to picket a common situs. The United States Court of Appeals for the District of Columbia on April 11, 1969, in a case involving Local Union 519 of the United Association, held that a union could not continue to picket the non-union subcontractor on the common situs during normal daylight hours after the general contractor and the non-union subcontractor made an agreement whereby, because of the picketing, the subcontractor would work only at night and on weekends. *Local Union 519, U.A. v. NLRB*, ——— U.S. App. D.C. ——— No. 21, 985 (April 11, 1969). The union according to this decision could only picket at night with little opportunity to publicize its dispute.

Member Brown, in dissenting from the NLRB's decision in this case, cogently recognized that while lip service is given to a union's right to inform the public of its dispute, this decision makes the "right" an optical illusion. He stated:

"The right of a union to publicize its dispute with the primary employer would be virtually obliterated if, by limiting the primary employer's employees working hours to the small hours of the morning a union could lawfully picket the primary employer's place of business only at that time."—*Local Union 519, U.A. (H. L. Robertson)*, 171 NLRB No. 37, 68 LRRM 1070.

Thus, with "separate gate" and "separate hours" the unions are foreclosed in all practical effect from engaging in common situs picketing. These two decisions make the adoption of H.R. 100, without amendment, even more critical today than it has been in the past. The United Association urgently requests passage of H.R. 100.

Respectfully,

PETER T. SCHOEMANN,
General President.

STATEMENT ON BEHALF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS

The Congress once again has before it H.R. 100, to amend section 8(b) (4) of the National Labor Relations Act as amended, with respect to labor disputes at the site of construction projects. This bill, introduced by Representative Frank Thompson of New Jersey, Chairman of the Special Labor Subcommittee of the House Education and Labor Committee, is designed to correct a long standing injustice that discriminates unfairly against building trades workers. This injustice comes about as a result of section 8(b) (4) of the National Labor Relations Act, as amended, the provision outlawing so-called secondary boycotts. In its present form, as construed by the United States Supreme Court in its 1951 decision in the *Denver Building and Construction Trades Council* case, section 8(b) (4) bans strikes and picketing by such employees even though they are engaged in activities which would be perfectly lawful if performed by workers engaged in labor disputes involving manufacturing establishments.

Because of its patent unfairness, strict application of the secondary boycott prohibition contained in section 8(b) (4), has from the very beginning been regarded by labor relations experts, government officials and Members of Congress as unfair, unsound and unjustified when applied to building and construction trades workers.

President Truman in 1949 proposed to Congress legislation that would, among other things, have nullified the effect of the *Denver Building Trades* ruling. President Eisenhower in 1954 recommended:

"That the Act be clarified by making it explicit that concerted action against an employer on a construction project who, together with other employers was engaged in work on the site of the project will not be treated as a secondary boycott."

In 1959, when Congress was considering the legislation which in its final form became the Labor Management Reporting and Disclosure Act, a proposal to amend section 8(b) (4) so as to permit strikes and picketing at the sites of building and construction projects was a major issue before the Conference Committee which produced the final form of that Act, and only a threatened point of order prevented the Conference Committee from agreeing to include such a provision in the final bill.

Again, in 1961 and 1965 efforts were made in Congress with the approval of the Administration to secure the passage of legislation that would restore the right to picket to employees employed at the site of building and construction projects.

Very little in the way of substantive argument has ever been advanced to justify the discriminatory treatment against building and construction trades workers which results from the operation of section 8(b) (4). At times there has been misunderstanding as to the possible effect of proposed modification of section 8(b) (4) along the lines proposed in H.R. 100. So far as we are aware, however, every possible excuse for any such misunderstanding has long since been dissipated. Insofar as the labor movement is concerned, there is general agreement among all interested elements as to the need and justification for prompt enactment of the legislation contained in H.R. 100.

The AFL-CIO wholeheartedly supports and endorses the statement in support of H.R. 100 which was submitted to the Special Subcommittee on Labor on April 25, 1969, on behalf of Mr. C. J. Haggerty, President of the Building and Construction Trades Department, AFL-CIO.

We are pleased to note that Secretary of Labor George P. Shultz expressed support of the situs picketing principle when he testified before the Special Labor Subcommittee on April 22, 1969. This is in line with the position that officials of the government have uniformly taken, regardless of political affiliation, in every administration since President Harry S. Truman's.

It is unfortunate, however, that the Administration's stand has been somewhat muddled by reason of suggestions made in the course of Secretary Shultz's testimony. Some of these suggestions are neither germane nor relevant to the purpose of the legislation, such as the proposal to allow enforcement of collective bargaining agreements by injunctions, as well as damage suits. We strongly urge the Subcommittee to confine the pending legislation to the situs picketing problem and to avoid proposals that can only confuse judicious consideration of the problem proposed to be dealt with by H.R. 100, and may open up other totally irrelevant and controversial problems.

We urge the Congress to take prompt action to enact into law this much needed legislation.

STATEMENT OF EDWARD F. CARLOUGH, GENERAL PRESIDENT, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

My name is Edward F. Carlough, General President of the Sheet Metal Workers' International Association, representing approximately 140,000 members and 500 local unions throughout the United States of America. I wish to take this opportunity to go on record to support the enactment of H.R. 100, a bill to amend Section 8(b) (4) of the Taft-Hartley Act.

For the last 18 years the issue of on-site picketing at the construction site has been given long and exhaustive consideration by both the Executive Branch of the Government and the various committees of Congress. Every aspect of this legislation has been explored time and time again.

The bill, H.R. 100, implements the recommendations of four Presidents of the United States—Truman, Eisenhower, Kennedy and Johnson. During each of these administrations, committees of Congress, after familiarizing themselves with the factual and legal aspects of the legislation have voted in favor of similar proposals and have printed reports dealing with their reasons. The line of favorable committee reports extends from the April 1950 Report of the Senate Labor and Public Welfare Committee (83d Congress, First Session, Senate Report No. 1211) when the Republicans were in the majority, to the favorable Report of the House Education and Labor Committee of 1968 (House Report No. 227, 90th Congress, First Session) when the Democrats were in the majority.

H.R. 100 was favorably reported by the House Education and Labor Committee on May 4, 1967, but the House Rules Committee failed to report the bill for consideration on the House floor. A similar bill, H.R. 10027, remained pending before the Rules Committee for six months during the 89th Congress before the Committee acted and granted a rule. It was finally scheduled for floor action on May 12, 1966, when it was withdrawn from the agenda at the request of the then Chairman of the House Education and Labor Committee and was not rescheduled. This action was without precedent in the history of the United States Congress.

H.R. 100, as you are well aware, is intended only to remove the unjust restric-

tion placed upon the building and construction trades by the decision rendered by the N.L.R.B. in the *Denver Building Trades* case in April of 1949.

Section 8(b) (4) of the Taft-Hartley Act, as currently applied and interpreted denies building and construction trades unions the right to peaceful picketing at the employment site. This right is guaranteed to all other labor unions. For 60 years prior to this decision, the unions now affiliated with the Building and Construction Trades Department enjoyed the same rights as all other unions. The continued denial of this right is rank discrimination and should be eliminated.

I would strongly urge favorable action on this legislation which is designed simply and solely to give building and construction trades unions the same rights as are now enjoyed by all other labor unions.

STATEMENT OF M. A. HUTCHESON, GENERAL PRESIDENT, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

My name is Maurice A. Hutcheson. I am the General President of the United Brotherhood of Carpenters and Joiners of America, a labor organization affiliated with the Building and Construction Trades Department of the AFL-CIO. We represent over 790,000 members employed in the building and construction industry.

I would like to state that we wholeheartedly endorse the testimony of President C. J. Haggerty of the Building and Construction Trades Department in support of H.R. 100, the Situs Picketing Bill.

We in the United Brotherhood know from long experience that we must be free to take economic action to enforce agreements which we make with contractors if we are to maintain suitable conditions on construction work. When we make agreements we are expected to and do live up to them. We expect no less from the contractors who enter into agreements with us.

But in those instances where a contractor, for whatever reason, decides to ignore vital provisions in his collective agreement we are often left with no practical alternative but to assert our economic strength. If we are deprived of that source of strength, the usually long negotiations held in arriving at our agreement become an exercise in futility, since the legal remedies available to rectify violation of an agreement after a job is completed offer little or no satisfaction.

In theory, the law guarantees our rights in this regard. In practice, ever since the *Denver Building Trades* case, the guarantee becomes virtually inoperative whenever there is more than one contractor on a job site. And this, of course, is usually the case.

When contractors, by entering joint ventures or farming out part of their work to subcontractors, create technically separate entities entitled to separate legal protection, they are able to invoke the Taft-Hartley Act secondary boycott provisions to prevent effective economic action directed against the very contract violations which they commit. Since the interests of joint ventures and those in contractor-subcontractor relationships are common, it is unrealistic to permit such a situation to exist. In effect, a contractor can immunize himself from legitimate defense against his contract violations by the mere expedient of signing a few papers, dividing his work responsibilities, and creating technically separate "employers."

A contractor on a construction project should not be free to create a situation in which normally lawful primary activity is converted into secondary activity by changes of form only, not substance. This the present law permits him to do.

There is, for example, as recognized by the dissenting justices in the *Denver Building Trades* case, no real distinction between a contractor directly ignoring an obligation which he has undertaken by contract and his doing so indirectly by transferring his responsibility through the formality of subcontracting to an employer who is not likewise obligated. He has made any resulting dispute his own and should not be permitted to claim that he is the innocent victim of someone else's dispute.

We believe H.R. 100 will be immeasurably helpful in restoring the "balance of power" on construction jobs. The result of its passage will be a decrease in work stoppages, not an increase, because it will place responsibility where it belongs, on the shoulders of all real parties in interest to a labor dispute on a construction site. They are the ones in the best position to resolve peacefully and constructively the day-to-day problems which arise.

(Statements from Opponents of H.R. 100)

STATEMENT BY KENNETH E. TOBIN, JR., MANAGING DIRECTOR OF BOTH THE NATIONAL SAND AND GRAVEL ASSOCIATION AND THE NATIONAL READY MIXED CONCRETE ASSOCIATION

My name is Kenneth E. Tobin, Jr. I am Managing Director of the National Sand and Gravel Association and the Managing Director of the National Ready Mixed Concrete Association. I am appearing before your Subcommittee in behalf of the members of the National Ready Mixed Concrete Association and the National Sand and Gravel Association. Both organizations are strongly opposed to the enactment of H.R. 100 and related bills. The Board of Directors of the two Associations unanimously adopted a resolution, authorizing this presentation to your Subcommittee.

The two Associations have member companies throughout the United States, including Puerto Rico. These companies account for a substantial majority of the total annual ready mixed concrete production and sand and gravel production in the United States. I speak therefore as the representative of the two industries which provide the basic materials for the construction program of our country.

Let me make it clear that the companies who are members of our Associations are not employers in the construction industry. Our members are engaged primarily as materialmen furnishing ready mixed concrete and sand and gravel to the job site for use by construction and building contractors. Nonetheless, our industries are necessarily exposed to serious economic injury by picketing which shuts down construction and building jobs to which we furnish our products. Legislation which increases the likelihood of such shutdowns, by removing the prohibition against secondary boycotts at the site of construction and building projects, is injurious to our member companies and seriously detrimental to the public interest of the United States.

The evils of secondary boycotts are, I am sure, well known. The prohibition against them in Section 8(b)(4)(B) of the Labor Management Relations Act reflects the general view of the American people that unions should not have the power to involve neutral employers and their employees as pawns in their labor disputes, and that when they do so it is the public which is made the unwilling and unnecessary victim. The proponents of H.R. 100 make no effort to justify secondary boycotts. They seek, rather, to have what are in truth illegal secondary boycotts treated as primary boycotts in the construction industry. And they attempt to support this by asserting that the situation in the construction industry is so different that different rules should apply. We believe, and we are confident that the general public shares our belief, that the rules which recognize secondary boycotts for what they are should be the same for the building trades unions as they are for all other unions.

The principal argument advanced in favor of H.R. 100 appears to be based on the supposed analogy to the right of employees in an industrial concern to picket the industrial operation, even though the actual dispute involves only a small number of the employees working at the industrial site. The argument runs that since the picketing of the industrial concern is "primary" and hence legal, the building trades unions should likewise be entitled to regard all picketing at a construction site as "primary."

The two situations are not analogous, and the present law properly recognizes the realities which distinguish them. At the industrial establishment, each of the employees work under a set of policies, wage rates, grievance procedures and the like established by that single employer. At the construction project, on the other hand, there are many employers. At the construction project the picketing which would be permitted by H.R. 100 is picketing which will affect, and which will be intended to affect, employers and employees with whom the pickets have no direct relationship. At the industrial plant, on the contrary, the picketing is intended to affect the employer of the pickets.

The multiplicity of employers in construction work, moreover, is not a device by which to thwart the legitimate activities of the building trades union. The multiplicity is rather a reflection of the multiplicity of the building trades unions themselves, and the insistence of each of them on the maintenance of its own jurisdiction.

That each of the employers may have the responsibility for a portion of a construction project, and may have a contractual relationship to a prime contractor which spells out that responsibility, does not make them less neutral. Secondary boycotts are just as much lacking in justification when the work being done by neutral employers is physically close to the primary employer as when it is being done at some distant location. Moreover, at some "construction sites"—particularly at defense installations—there are often several quite independent projects under way at the same time, with several prime contractors, yet H.R. 100 would permit these prime contractors and their employees to be made the victims of secondary boycotts simply because of the happenstance that each of them was working at a military base or a missile site.

Other dangers in the bill are not recognized at all. One is the rubbery nature of the phrase "at the site of the . . . work." In the application of the Davis-Bacon Act, in which the same phrase appears, the Solicitor of the Department of Labor has ruled that the concept of "site" includes, for example, everything within the outside boundaries of a defense installation even when the actual construction was on only a small portion of it. And even when no defense "site" is involved, the Solicitor has ruled that a "site" includes operations far removed from the location of the construction project—such as a sand and gravel pit 25 miles from the actual construction project, and a ready mixed concrete plant 15 miles from the construction project. The application of rules such as these to define the word "site" in the exemption granted by H.R. 100 would legalize secondary boycotts which have no relation whatever to the limited situations referred to by the proponents of the bill.

Again, there is no protection in the bill against inter-union disputes. There have been numerous instances in the past where the building trades union have regarded other unions as, in effect, no unions at all when they impinge or appear to impinge on work which the building trades unions assert to be their exclusive province. These disputes are the most intractable, the least amenable to mediation, and the most protracted. The President of the Machinists Union has stated that disputes over union "jurisdictions" constitute the bulk of the strikes at defense installations. Yet the bill imposes no restraints on a union which seeks to stop all work on a project in order to assert its claim of entitlement to certain kinds of work.

Again, there is no protection in the bill against product boycotts. The language of the bill permits strikes or refusals to perform services at the site of the construction "directed at" any employer with whom the union has a "labor dispute" relating to "working conditions." The history of product boycotts makes it reasonably apparent that one of the "working conditions" which a building trades union might well find objectionable would be the use or installation by its members of so-called "unfair" products of an employer whose employees had elected not to have a union as their bargaining agent or whose employees had elected to belong to the "wrong" union; "wrong," that is, in the sense that these employees did not select one of the building trades unions at their representatives in bargaining with management.

In conclusion, I should like to point out that the "inequity" which is alleged to justify H.R. 100 is wholly illusory. The building trades unions may now, under Section 8(f) of the Act which was added by the Landrum-Griffin amendments of 1959, make pre-hire agreements which eliminate the real or imagined weaknesses in the election procedures applicable to those unions. Moreover, the Landrum-Griffin amendments, by the proviso to Section 8(e), except from the prohibition against "hot cargo" clauses agreements in the construction industry "relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting or repair of a building, structure, or other work." Thus the building trades unions, unlike other unions, can make agreements with a general contractor in the construction industry by which he agrees to use only those subcontractors who have union contracts. With these advantages which Congress has already accorded, the building trades unions are now in fact specially favored, rather than specially disadvantaged.

The members of the National Ready Mixed Concrete Association and the National Sand and Gravel Association urge, with all the force at our command, that you do not approve this legislation. The building trades unions already have, and frequently use, power which is incompatible with the public interest and which inflicts injuries and serious harm on employers and employees who are not involved, in many cases, in the disputes at construction sites. It is noteworthy at this point that quite frequently, and indeed quite

generally, it is jurisdictional disputes between building trades unions which lead to stoppages of construction for defense purposes, for public works, for private investment in needed facilities, and projects of great national urgency.

STATEMENT OF THE NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

The 65,000 members of the National Society of Professional Engineers are appreciative of the opportunity to present their views in opposition to H.R. 100, a bill which would amend the National Labor Relations Act in such manner as to produce a seriously adverse effect upon the performance of services by engineering and surveying firms for clients in the construction industry.

The membership of the National Society of Professional Engineers consists of engineers who are engaged in virtually every specialty, branch, and aspect of engineering practice and employment. Each has qualified and been licensed to practice his profession pursuant to one or more of the various state engineering registration and licensing laws. The Society itself, a nonprofit organization, is the authoritative voice for these professionals with headquarters in Washington, D.C.

H.R. 100 seeks to amend Section 8(b) (4) of the National Labor Relations Act so as to legalize "common situs picketing", a practice which is presently prohibited by law as a secondary boycott. The desire of those wishing for authority to engage in this otherwise unlawful activity arises out of a relatively uncomplicated factual situation. Simply stated, a construction union engaged in a dispute with a single employer or subcontractor at a particular construction site could, if H.R. 100 were enacted, picket the entire project in order to bring all activity to a complete halt as a means of forcing that single employer or subcontractor to accede to the union's demands. The net effect would be to legalize the historically unlawful tactic by which a union could pressure and coerce nonunion employees into the union as the price of not having the whole project shut down by a strike or by the presence of picket lines. If enacted, H.R. 100 would thus give the unions a death grip on the total construction project at a particular location despite the existence of a dispute with only one of the employers or subcontractors thereat. In addition, it could open the door for similar action concerning the manufacturers of products which may be used in the construction project.

In expressing our concern we wish to emphasize that we do not quarrel with any union's legitimate dispute with a construction contractor or subcontractor insofar as wages or working conditions are concerned. Nor do we take a position on the relative merit of the pending legislation as it could be applied to such a dispute in the construction industry. Our concern, based upon the experience of engineering and surveying firms—which gives us more than good cause therefor—is that H.R. 100 would encourage building trade unions to use coercive tactics and pressures to attempt to unionize engineering and surveying employees who, if given a free choice, would not wish to be so unionized.

Engineering and surveying firms and their employees occupy a rather unique status vis-a-vis construction projects. Engineering and surveying are highly specialized services performed for a client, be it the general contractor, a subcontractor, the land developer or the project owner. The engineer or surveyor has an inherent obligation to perform an unbiased service for his client and therefore to use his highest degree of skill and ability. He is not, by virtue of his relationship to his client, necessarily a partner or joint venturer with others engaged on the project. For instance, the standard form of agreement between owner and engineer for professional services requires the engineer to furnish general observation of the work of the contractor, assist in a correct interpretation of the plans and specifications, and safeguard the owner against defects and deficiencies on the part of the contractor. Under such circumstances, the engineer is hardly a partner or joint venturer of the construction contractor. Rather, he is engaged solely to perform a service, much the same as a lawyer might be retained by the same client to draw up a contract or other legal document. The only difference between the engineer or the surveyor and the lawyer is that the former will usually spend a portion of his time at the construction site.

Because of this unique position and the highly specialized nature of their services, engineers and surveyors have no community of interest or identification with the mechanics or laborers at the construction site who might traditionally belong to a building trades or construction union. This fact is generally recognized throughout the construction industry, and, with regard to members of

survey crews, has been officially recognized by the House General Subcommittee on Labor.*

In view of this widely recognized difference of position and interests as between professional and technical engineering and surveying employees on the one hand, and mechanics and laborers on the other, it is not surprising that engineering and surveying employees seldom choose to be represented by a union—and in those relatively few cases where they do, they almost invariably prefer a union composed exclusively of similar categories of employees.

Thus, when a union seeks to organize engineers and surveyors, it is usually met with considerable resistance. As a result, in order to organize engineering and surveying employees, the union must resort to both direct and indirect coercion and pressure against the contractor by whom the engineering or surveying firm is retained. Unfortunately, in the absence of some protection in the law, many contractors cannot resist such pressure and are unwilling to risk a shutdown of the entire job. The net result is that the contractor in turn is forced to bring pressure against the engineering and surveying firm on the one hand, or he may be altogether reluctant to engage the services of an engineering and surveying firm whose employees are not represented by a building trades or construction union on the other. In such cases, the engineering and surveying firm is defenseless, and employees of the firm are, in effect, denied their right to join or not join a union as they themselves see fit.

The National Society of Professional Engineers believes that H.R. 100 would strip from engineering and surveying firms much of the protection they now have against such coercion. In support of this point, several specific instances may be cited where construction industry unions have attempted to bring pressure to bear against engineering and surveying firms in order to force their employees to join the union or be replaced by union members, and have been stopped only by the power of the Taft-Hartley Act. These examples will demonstrate that our concern is not based on remote possibilities or conjecture, but based on fact.

In February of 1960, the National Labor Relations Board ruled that Local No. 12 of the International Union of Operating Engineers, AFL-CIO, violated Sections 8(b) (4) (A) and 8(b) (4) (B) of the Taft-Hartley Act by encouraging employees of construction contractors to strike because surveyors engaged in work at the project site were not members of the Union. The surveyors were employed by two firms engaged in civil engineering and land surveying work in the State of California. Specifically, the Board found a violation of Section 8(b) (4) (A) when the Union ordered work stoppages to force construction contractors to cease doing business with certain land development companies in order to cause the developers to cancel their contracts with the two engineering and land surveying firms. Additionally, the Board found the Union to have violated Section 8(b) (4) (B) because the work stoppages had the further objective of forcing the engineering firms to recognize or bargain with the Union on behalf of their employees who were performing work on the construction site. (*International Union of Operating Engineers, Local Union No. 12, AFL-CIO and Tri-County Association of Civil Engineers and Land Surveyors*, 126 NLRB 688.)

The above-cited California case, popularly known and referred to as the *Tri-County* decision, provides a classic example of the type of activity which the building trades unions would be able to freely engage in without the present sanctions imposed by Section 8(b) (4) of Taft-Hartley. If the pending legislation

*In June, 1963, for example, that Subcommittee, chaired by Representative James Roosevelt, issued a report on the Administration of the Davis-Bacon Act containing the following finding and recommendation:

3. "*Laborers and mechanics*"—Evidence from the hearings revealed that in some instances the term "laborers and mechanics" had been interpreted by the Department of Labor to include technical employees of survey crews. When a classification is merely used as a device to avoid being subject to the act, the Department should, of course, ignore the misleading classification. If the workers involved are doing manual work of a laborer or mechanic they should be included. However, when such employees are engaged primarily in nonmanual work, they should not be included in the term "laborers and mechanics."

Recommendation. Employees of survey crews whose work is primarily professional, administrative, supervisory, clerical or otherwise nonmanual in nature, should be specifically excluded from inclusion in the terms "laborers and mechanics." This specific exclusion would eliminate much of the confusion that has surrounded these terms. The committee takes note of the letter of the Secretary of Labor of August 2, 1962, holding that members of survey crews engaged primarily in nonmanual work are not covered as laborers and mechanics. (Hearings, "Administration of Davis-Bacon Act," p. 1123). The committee believes, however, that this position should be affirmed by legislative action.

is enacted, we can see only too clearly that unions will intensify their efforts to pressure engineering and surveying employees to join unions, even if they have to shut down an entire construction job to do it.

Another case provides still further evidence of what unions have done and would like legally to be able to do. In this case, *Operating Engineers Local 3 v. NLRB* (266 F. 2d 905), the U.S. Supreme Court left standing a decision of the U.S. Court of Appeals for the District of Columbia Circuit which upheld a decision of the NLRB that the Union and certain California chapters of the Associated General Contractors had committed unfair labor practices against employees of an engineering and surveying firm. In this situation, the Union ordered a work stoppage to compel the engineering and surveying firm to force its employees to join the Operating Engineers Union, even though these same employees were already represented by another organization. The NLRB found this activity to constitute an unfair labor practice on the part of the Union in that the Union's strike against the AGC brought pressure to bear which carried through as discrimination against the employees of the engineering and surveying firm.

It seems clear from these examples that it does not matter to the union whether the employees it seeks to organize at the construction site are already represented for collective bargaining. Nor does it apparently matter whether they bring pressure on general contractors, land developers, or directly on the engineering and surveying firms to achieve their ends.

At the present time, the engineer and surveyor do have some protection from such pressure and coercion—namely, Section 8(b)(4) of the National Labor Relations Act. Should H.R. 100, the "common-situs" picketing bill, be enacted, however, the rights of engineering and surveying employees in the construction field could be placed in serious jeopardy or destroyed by legally permitting the building trades unions to shutdown an entire project or engage in other pressure tactics in an effort to organize these employees.

The main question which therefore concerns us is whether employees of engineering and surveying firms working at the sites of construction projects are to be deprived of the present protection of the law which clearly stipulates that employees have the equal right to join or refrain from joining a union. H.R. 100 raises this issue in stark reality. The employees with whom we are concerned have the undoubted right to decide by majority vote under the procedures of the National Labor Relations Board whether they wish to be represented by a union, or not. H.R. 100 would take away from the employees this free choice and give them only the right to join the union or pay the price of their employer and others, not parties to any dispute, from being permitted to operate at the site of construction.

This bill has been repeatedly suggested to previous Congresses which, in their wisdom, did not pass it. The National Society of Professional Engineers strongly opposes its passage now.

ADDENDUM

In addition to those cases cited in our testimony in support of our opposition to H.R. 100, the detrimental consequences which engineers and surveyors can expect from enactment of the bill is further illustrated by a relatively recent unreported instance in Illinois.

Involved was an attempt by Local Union No. 573, Laborers International Union of North America to force the Homer L. Chastain and Associates consulting engineering firm to employ only union workers as rodmen and stake drivers. Chastain and Associates were performing services in connection with the construction of Interstate Highway 57. Picketing began at Chastain's home and then spread to the construction site where workers of other companies refused to cross picket lines. Work on I-57 was halted.

A complaint was filed with the NLRB charging the Union with secondary boycotting—the type of activity which H.R. 100 would legalize. The complaint was subsequently withdrawn in August of 1968 when the Union agreed to cease the boycott. Approved by Subregion Thirty-Eight of the NLRB pursuant to the National Labor Relations Act, the Union stipulated by agreement that it would not engage in or induce others employed by other contractors at the site of I-57 construction to engage in a strike or refusal to offer employment to such other contractors where the object was to force them to cease doing business with Chastain and Associates for the purpose of forcing Chastain to recognize or bargain with Local 573 as the representative of Chastain's employees unless so certified under Section 9 of the National Labor Relations Act.

STATEMENT OF WILLIAM B. MARX, MANAGER, AMERICAN BOILER MANUFACTURERS ASSOCIATION

American Boiler Manufacturers Association is a trade association composed of 47 active members who are engaged in the manufacture of boilers and their major components, and 42 associate members who are suppliers to the boiler manufacturing industry, insuring agents, or quasi-public groups interested in the boiler manufacturing industry. It was founded in 1888. ABMA's 47 active members operate approximately 60 manufacturing plants which are located in 22 states. Employees in 55 of such manufacturing plants are represented by labor organizations. These organizations include affiliates of the Boilermakers Union, the Steelworkers, Union, the Machinists Union, and two Electrical Workers Unions.

The approximate value of boilers produced annually in the 60 manufacturing plants operated by ABMA members is in excess of \$700 million. These boilers are sold and shipped throughout the United States; they are also shipped to foreign countries. All of ABMA's active members are engaged in operations which affect interstate commerce, and they are therefore subject to the jurisdiction of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151 et seq.).

One of the most successful products marketed by the members of ABMA has been the packaged boiler. There has been a steady growth in the use of prefabricated products, and boilers of this type have been sold for 38 years. Packaged, or more precisely, shop-assembled, boilers, are complete steam generating units; all their various controls and items of external piping are factory attached to form completely finished products on which no further fabrication work need be done at a job site. During 1968, ABMA members produced more than 7,500 packaged boilers, having a total value in excess of \$100 million.

During recent years the Pipefitters Union has made serious attempts to prevent installation of packaged boilers in order to obtain the work of fabricating these boilers on construction sites rather than continuing to do this work in manufacturing plants. One of the most serious of these attempts occurred in the Minneapolis-St. Paul area. Since the 1930's packaged boilers have been used in this area, and, after natural gas was brought in during the early 1950's, their use accelerated. At present, between 75% and 85% of the boilers used in the area were packaged. Their increased acceptance over "field-assembled" boilers (which are assembled on the job-site rather than in the factory) is attributable primarily to better quality, lower cost, and, most important factory-testing and inspection permitting the manufacturer to warrant the complete boiler against defects.

Locals of the Pipefitters Union, whose members both install packaged boilers and field assemble other boilers, decided in 1959 to put a stop to the use of the packaged product. After two unsuccessful attempts, in 1959 and 1961, they convinced local contractors in 1963 to incorporate so-called "work fabrication clauses" in the labor agreements between the unions and the Minneapolis and St. Paul Contractor Associations. These clauses, in effect, provide that the contractors will not purchase or install packaged boilers.

When certain contractors did not comply with the fabrication clauses—because a packaged boiler had been specified by the architect or purchased by the owner—the union applied coercive pressures to enforce the clauses. Illustrative was an incident involving Minnesota Mining & Manufacturing Company. When 3-M purchased packaged boilers for installation in a remodeled building and hired a local contractor to do the work, Local No. 455 threatened a complete shutdown of the job. A-M was finally forced to capitulate, the boilers were disassembled at the factory and reassembled on the job at a total added cost to 3-M of more than \$9000.

On the basis of this and similar cases in Minneapolis-St. Paul ABMA filed unfair labor practice charges with the National Labor Relations Board. These cases have gone through the Board and the Eighth Circuit Court of Appeals, with the last avenue of judicial relief now being a possible petition for certiorari to the United States Supreme Court.

Through these long and expensive proceedings, ABMA has learned the deleterious effects of a product boycott. Thus the Association is concerned with the "common situs" picketing bill, H.R. 100, because, in its judgment, the language of the bill does not insure against secondary boycotts of this type. In this connection ABMA respectfully urges the Committee to consider adding provisions which clearly prohibit this type of activity.

Since many product boycott cases, including our own, are directed against modern, prefabricated products, serious economic consequences may result, in addi-

tion to the threat to manufacturers involved and to their employees, most of whom as in our industry, are union members.

There has been a steady growth in the use of prefabricated products. The sales growth of shop-assembled boilers in the St. Paul-Minneapolis area is typical. The sales history of prefabricated houses shows a similar trend. During 1961, shipments of fabricated houses reached about 140,000 units—a growth of 10 percent over the number shipped in 1960. In 1955, less than 7 percent of the new single-family houses built in the United States were prefabricated; in 1961, the number was nearly 15 percent; and it reached about 19 percent in 1965. The yearly value of shipments of prefabricated wooden buildings and structures averaged about \$313,000,000 for the years 1959–1962; for the same years, the yearly average for prefabricated and portable metal buildings was about \$191,000,000.

The growth in the use of prefabricated products has had collateral economic effects. In particular, new markets have been opened. For example, prefabricated houses have generally tapped the low-cost market; sales of prefabricated “shell” homes have been greatest in the South where incomes are low; and prefabricated “mobile” homes sold well among itinerant workers and retired individuals. The growth of prefabricated housing has, in turn, affected a number of “specialty” materials. Thus, new adhesives and coatings have come into use; factory-finished floorings have been designed and produced; and conventional construction items, such as timbers, wood studs, and metals, have been replaced by the newer plastics and foams.

Why this growth in prefabrication as a production method? ABMA submits that the primary reason is because technological advances in manufacturing techniques and methods have lowered production costs. Thus, “packaged” boilers are fabricated on an assembly-line with the various components being put together in subassemblies which are then attached to the main vessel. Moreover, as contrasted with the field method of assembly, the conditions in boiler factories are “controlled”—that is, trained workmen and technicians use standardized tools and labor-saving manufacturing devices and procedures to produce a superior, less costly, and safer product.

Prefabrication, therefore, reflects the most salient characteristics of American capitalism, that is, the persistence with which changes take place. New products and new methods of production are continually being developed creating opportunities for investment and economic growth, but also requiring adjustments as the older products and methods of production are abandoned. This is the process of technological change.

Former Secretary of Labor, Arthur J. Goldberg, has well stated the importance of technological progress upon the American economy.

Testifying in 1961 before the Holland Subcommittee on Unemployment and the impact of Automation of the House of Representatives Committee on Education and Labor, he said:

Let me say at the outset that we in the Department of Labor regard automation and other technological advancement as an essential and desirable development for maintaining the strength of the U.S. economy. If we needed any reminder, the worldwide events of the last few weeks have recalled our attention to the fact that we must have a strong, progressive and technologically powerful nation to meet the demands that press on us from outside our borders. We face growing economic competition from many countries—a competition that American industry has successfully met in the past by the imaginative and efficient use of new technology with the resultant large increases in productivity.

As a people, we have benefited from technological change and rising productivity. In the past 50 years, for example, gross national product per capita, this is, the total of private and public goods and services available per person, has more than doubled. This happened with a large increase in population that had to go to work, and with a short workweek and more vacation time per worker. It was accomplished, obviously, because of the large increase in productivity.

New industries have arisen during this time. New products and services have made for an easier way of life—the automobile, plastics, antibiotics, better homes, and travel are a few examples.

All of this indicates why automation and other technological progress is so important to the American economy and why it may be necessary to step up the pace rather than tone it down.

Technological changes admittedly have had an impact on the employees in the industries affected. Some employees gain work; others may lose work. It is

apparent that to preserve the status quo, the latter group may turn to fabrication clauses and product boycotts of the kind attempted by the Pipefitters against packaged boilers. We do not believe it is proper or that this Committee is in favor of legislation which would slow down progress in the building industry in order to favor members of Building Trades Unions at the expense of manufacturers of products used on construction sites and the union members who make those products.

Again we express our belief that the secondary boycott of many products is a real threat if H.R. 100 is passed in its present form. We recognize that proponents of that bill claim it will not permit product boycotts. After nearly 6 years of expensive litigation trying to prevent product boycotts under present law we are extremely dubious about relying on any statutory language which does not specifically meet the problem.

STATEMENT OF COL. CURTIS B. DALL, CHAIRMAN, LIBERTY LOBBY
WASHINGTON, D.C.

This statement is submitted representing the views of LIBERTY LOBBY's 20,000 member Board of Policy, on behalf of the 215,000 subscribers to our monthly legislative report, *Liberty Letter*. The Board of Policy has specifically voted, overwhelmingly, to oppose labor monopoly, and we oppose H.R. 100 as an attempt to strengthen the already exorbitant monopolistic power of the giant national labor unions.

The basic issue before Congress in considering amendment of Sec. 8(b)(4) of the National Labor Relations Act to permit secondary boycotts by construction trades unions is whether these unions should have the right to close down an entire construction project because of a dispute with one subcontractor on the site. This is special interest legislation of the worst sort, and we can see no justification whatsoever for extending to one group of unions a power which all other unions are barred by law from exercising.

It should be made perfectly clear that the construction unions are not, as they claim, suffering under any great handicaps. The National Labor Relations Act, as interpreted by the Supreme Court in the *Denver Building Trades* case, allows them all the leeway they can reasonably ask for in carrying out legitimate trade union activities. It must be emphasized that these unions now have the right to strike and picket employers with whom they have labor disputes. There is no dispute as to their right to do so.

The law only requires that they observe certain safeguards, limiting the picketing to the employer involved in the dispute. The union must picket only when such employer is actually engaged in business on the site. The picketing must take place reasonably close to the site where employees of the primary employer are working. And the picket signs must clearly show with whom the dispute is taking place, and not imply that a neutral employer is involved in the dispute.

These are reasonable restrictions. When the construction unions demand the right to engage in secondary boycotts against employers with whom they have no dispute, they are actually demanding absolute control of the construction industry. They want a return to intolerable practices which were the specific targets of Congress when the Taft-Hartley Act was originally enacted. Before Taft-Hartley, labor unions freely engaged in secondary boycotts, with no remedy available to employers injured by these tactics.

Sen. Robert A. Taft, speaking on the Senate floor during debate on Taft-Hartley, made his position on secondary boycotts clear: "Under the provisions of the Norris-LaGuardia Act, it became impossible to stop a secondary boycott or any other kind of strike, no matter how unlawful it might have been at common law. All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have broadened the provision dealing with secondary boycotts as to make them an unfair labor practice."

In *Denver Building Trades*, decided in 1951, a union picketed an entire construction site in order to force one contractor on the site to cease doing business with another. The Supreme Court ruled that this was an illegal secondary boycott, within the meaning of Sec. 8(b)(4), and thus an unfair labor practice. It is this interpretation of the law which H.R. 100 seeks to overturn.

The union drive for legalization of common situs picketing is one of many examples of their unfortunate tactic of forcing others to do their organizing for them. The union bosses are aware that the most effective means of driving non-union labor out of the market is by forcing neutral employers to cease doing business with non-union employers. This is certainly an easier approach than trying to convince workers of the benefits of union membership. What the construction unions are really after is the right to close an entire construction site to prevent the employment of even one non-union worker on the site. H.R. 100, if enacted, will serve this purpose, and will, in effect, force employers into service as unpaid union organizers. If an employer wants to keep his job from being shut down, he will be forced to conspire with a union boss to deprive non-union workers of their livelihood.

Enactment of legislation legalizing common situs picketing will have a seriously detrimental effect on the American economy, and on a large portion of the American people. In spite of union propaganda, building contractors will make up only a small percentage of those hurt by the special interest legislation under consideration. Workers would be deprived of the right to decide by majority vote, under NLRB procedures, whether or not they want to be represented by a union. The worker who does not want to be unionized will have dues money extorted from him, and will have no recourse if he wants to continue to work at his trade.

All Americans will be affected by the inflationary pressures which will result from the inevitable wage increases, unrelated to productivity. It should be recalled that workers in the construction trades are already the highest paid in American industry. Unreasonably high labor costs in the industry, combined with the progress-blocking tactics of the construction unions, have made it increasingly difficult for the average family to own its own home. Enactment of H.R. 100, particularly at this time of unprecedented interest rates, will be an unconscionable blow to potential home buyers. LIBERTY LOBBY contends that their interest should take clear precedence over the desire of a few labor leaders to expand their powerful and prosperous empires.

Vital public projects, such as schools, hospitals, and even military and space construction essential to our national security would be put at the mercy of labor bosses, whose past activities have not shown a sense of responsibility. And, even when these projects are not shut down, increased labor costs will raise the price to the taxpayers, thus leading to even higher tax rates.

In conclusion, it must be kept in mind that our present national labor policy, as set out in Taft-Hartley and Landrum-Griffin, is designed to be neutral toward unionism. The right of labor to organize freely and fight for the interests of its members is recognized and protected. However, the right of a worker to refrain from joining a union is equally recognized and protected. Existing law, in balancing the rights of the parties to labor disputes, permits the picketing of a non-union employer to induce members of other unions to refuse to cross the picket line and enter the premises.

But the union is not, and should not be, permitted to carry the dispute to a neutral employer and picket him to force him to stop doing business with the non-union employer. We believe that the monopoly power of big unionism has gotten way out of hand, injuring the working man as well as business and the public at large.

We recommend the defeat of H.R. 100. Rather than enacting a totally unjustified piece of special interest legislation, we believe that Congress should consider giving the American people some relief from the uncontrolled power of monopoly unionism which is threatening the stability of the American economy.

STATEMENT OF GERARD C. SMETANA ON BEHALF OF THE AMERICAN RETAIL FEDERATION

My name is Gerard C. Smetana. I appear today on behalf of the American Retail Federation. I am an attorney primarily engaged in the practice of labor law, admitted to practice in Illinois, New York and the District of Columbia. I have also had an opportunity to focus on the work of the National Labor Relations Board as a contributing editor of "The Continuing Labor Law", currently being published by the Labor Law Section of the American Bar Association; in a statement I presented to the Subcommittee on Separation of Powers, Committee on the Judiciary, United States Senate, May 31, 1968, during

its hearings on Congressional Oversight of Administrative Agencies; as a lecturer at the University of Chicago, Graduate School of Business Administration; and as a speaker at the Northwestern University School of Law Seventh Annual Corporate Counsel Institute.

The American Retail Federation is an organization comprised of seventy-seven national and state retail associations. The membership of these associations consists of a wide variety of retail businesses ranging in size from a small local store to large national chains, representative of all aspects of the retail industry and totalling in excess of nine hundred thousand retailers throughout the country. The Employee Relations Committee of the American Retail Federation, of which I am a member, is drawn from the various retail associations which make up the Federation and from individual companies, both large and small, which are individual members of the Federation. That committee has initiated a number of policy statements on existing and proposed federal labor legislation. Such statements have been submitted, in accordance with the rules of the Federation, to its constituent groups, and the views which are here expressed are the views which have been accepted by the members of the American Retail Federation.

INTRODUCTION

The limits of a union's right to picket peacefully in a labor dispute is the product of a compromise between the union's right to free speech and the right of strangers to the union's dispute to be free of the harmful effects of such speech, or picketing. The rights of strangers to remain uninvolved is recognized in Section 8(b) (4) of the National Labor Relations Act which protects neutrals from being drawn into labor disputes not of their making and over which they have little or no control.

While unions have historically argued that the nature of picketing as "speech" constitutes a Constitutional justification for ever broadening its permissible range, the Supreme Court has recognized the conceptual error of that claim:

"Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. . . ."¹

"[Although] picketing has an ingredient of communication, it cannot dogmatically be equated with, with constitutionality of protected free speech Our decisions reflect recognition that picketing is 'indeed a hybrid'."²

It is essential to this Committee's deliberations that it avoid the tyranny of slogans and dogma which obscure the need for compromise and fail to give adequate weight to the realities of the injuries which unlimited picketing will cause. The need for replacing jargon with a balanced appraisal of the realities of industrial life was well put in a classic discussion of picketing:

"Coercion may be a physical compulsion; it may also imply merely the exertion of economic pressure . . . 'Persuasion' may be insult and menace; it may also be an appeal to free judgment A vocabulary so freighted with ambiguity easily lends itself to a fictitious issue Unwittingly, a court may be pronouncing judgment upon the implications of a label, instead of weighing the elements of an industrially conflict as it actually transpired. These situations make a heavy demand upon intellectual detachment and require a sturdy hold upon reality."³

Accordingly, any proper examination of the justification of an expansion of the right to picket—or, indeed, of its current limits, must neither rely on propaganda nor seek to appease any pressure groups; it must rest on a fair analysis of the legitimate needs of unions which do not impinge on the legitimate rights of others.

We state this rather self-evident conclusion because the Thompson bill with which this Committee is currently concerned is justified only by regarding common-situs picketing as an exercise in "free speech" in disregard of the "hybrid" nature of such picketing; because that bill is predicated on the

¹ *Empire Storage & Ice Co. v. Giboney*, 336 U.S. 490 (1949).

² *International Brotherhood of Teamsters v. Hanke*, 339 U.S. 470 (1950).

³ Frankfurter & Greene, *The Labor Injunction*, 1930, pp. 34, 35.

desires of unions rather than their needs; and because of rhetoric which supports it has ignored the legitimate rights and needs of those who would be harmed by it.

Moreover, the same arguments which are urged in support of this bill have already succeeded, in other picketing contexts, in permitting unions either to picket employers who ought to be free of picketing, or to picket in a manner which ought to be prohibited.

Accordingly, the factors which should compel Congress' refusal to enact the Thompson bill should exert a similar compulsion on Congress to cure related existing inequities.

A. H.R. 100: AN UNNECESSARY AND HARMFUL PROPOSAL

H.R. 100 would amend Section 8(b) (4) of the Labor Relations Act so as to legalize *situs* picketing and secondary boycotts at the site of any work involving construction, alteration, painting or repair of any structure, and at which there exists a labor dispute involving any union in the construction industry. Pursuant to the terms of this bill, a union is authorized to picket employers who are totally uninvolved in any controversy, who have no control over the conduct of the employer with whom the union's dispute does exist, and whose only fault lies in their physical proximity to the disputing parties. Further, the breadth of the proposed bill would include, presumably, such minor "construction" as the periodic cleaning of an existing plant in any industry in which any painting is contracted out. It is apparent, therefore, that, since the majority of secondary boycotts occur in the construction industry, the breadth of the common *situs* picketing bill virtually repeals existing prohibitions against secondary boycotts notwithstanding Congress' deliberate attempts to create such prohibitions in 1948 and to strengthen them in 1959.

The philosophical premises which underlie this bill are but wholly contrary to Congress' purpose in enacting and amending Section 8(b) (4) and exclude any regard for the views or welfare of employers, whether such employers are parties to a labor dispute or merely innocent strangers to it. One of these premises is that unions in the construction industry have rights which are and should be denied to all other unions which would continue to be subject to the strictures of 8(b) (4). A second premise is that employers who are in any respect involved with unions in the construction industry have lesser rights to be free of the injurious effects of secondary picketing than do any other employers.

The most pernicious premise underlying this bill, however, is that construction unions should be guaranteed success in all their disputes regardless of the merits of their position and the methods they employ. This result would necessarily follow from H.R. 100, which allows those unions to picket any and all employers at the site of the work done, including those who were complete strangers to the dispute. This would inevitably lead to pressures being applied by those neutral employers whose work or business would suffer from the picketing to which they would be subjected, on the principal to the dispute to settle with the picketing unions. The combination of pressures from the pickets and from the picketed neutral employers would almost certainly cause a rapid capitulation to the picketing union, irrespective of the nature or merits of the dispute.

In short, H.R. 100 constitutes a discriminatory measure designed to solve labor disputes by conferring superior tools of economic warfare on one of the disputants at the expense both of the other disputant as well as totally innocent and uninvolved neutrals. And in doing so, that bill violates the spirit and the very purpose of Section 8(b) (4) of the Act which deliberately compromised unions' unlimited right to picket precisely in order to protect such neutrals.

In addition to its philosophical infirmity, this measure also suffers from catering to unions' desires rather than their legitimate needs, and is therefore unnecessary. Unions' right to picket is a function of their right and need to have effective means by which to convey accurate information. The National Labor Relations Board has, however, already accorded unions this opportunity, including those unions involved in the construction industry, in a context which protects their legitimate rights at the same time other equally legitimate rights of neutrals are also protected.

In *Moore-Dry Dock Co.*,⁴ the Board held that picketing of a secondary or neutral employer was not unlawful so long as the rights of neutrals were not needlessly compromised. The limitations placed on unions were eminently reasonable and left them free to convey their message; they were permitted to picket such neutrals' premises so long as their picket signs clearly indicated the identity of the employer with whom the dispute existed; the picketing was being carried on only when the primary employer or his employees were engaged in their normal business at the site; the picketing was limited to times when the situs of the dispute was located on the neutrals' premises; and the picketing was limited to places reasonably close to the location of the situs of the dispute.

Notwithstanding the fact that these rules afforded the unions adequate opportunity to protest and inform, the Board subsequently eased even these restrictions. In *New Power Wire and Electric Corp.*,⁵ the Board held that these tests were not to be applied on an "indiscriminate per se basis", and circumstances should be investigated to determine whether the union had "substantially" complied with them. And in *Plauche Electric, Inc.*,⁶ the Board determined that the clear violation by the union of one of these elements did not render its picketing illegal; that element was to be considered only as "one circumstance among others in determining the object of the picketing". Yet H.R. 100 would remove even the limited protection remaining to neutral employers at a "construction site".⁷

Unions' contentions that they require the total exemption from the secondary-boycott laws, which H.R. 100 provides them, is grounded on the following claim: At "construction sites" all participating unions are engaged in a common project so that each union has a right, enforceable through picketing, to require each of the participating employers to be unionized. This is a truly remarkable contention in the light of Section 7 of the National Labor Relations Act which guarantees every worker the right either to belong to a union or to decline to do so. Thus the proponents of H.R. 100 seek an increase in unions' power in reliance upon a non-existent right. Similarly, the contention that employers must lost their separate legal identities because they perform distinct functions on the same overall project is a *non-sequitur* which cannot survive its repetition here; according to this theory, no neutral employer could ever exist in any industry since every supplier of goods or services to another is a necessary link in the latter's ultimate manufactured product, sale or performed service. Finally, the notion that the law should be tailored to permit the satisfaction of an unionized employee's desire that he should only work in close proximity with other unionized employees would subvert the legislative function; Congress would no longer seek to balance legitimate rights but would, instead, merely satisfy union members' aesthetic preferences.

In summary, therefore, the common situs picketing bill seeks aggrandizement of unions' power without Constitutional or philosophical justification, without genuine need, and without concern for the resulting diminution in the rights of neutral employers who would be adversely affected by its enactment.

Moreover, to the extent that the law has already been afflicted with inequities similar to those which H.R. 100 would increase and perpetuate, Congress and this Committee as its agent should address itself to their eradication. The following sections of this presentation discuss several areas of the law in which the extent and manner of unions' picketing should be subjected to scrutiny and change.

B. SECTION 8 (b) (7) : THE SUBVERSION OF CONGRESS' INTENT TO LIMIT ORGANIZATIONAL-RECOGNITIONAL PICKETING

The history of labor legislation, since the Wagner Act, has demonstrated an attempt by Congress to assure employees the opportunity of an uncoerced freedom of choice in the selection or rejection of a collective bargaining representative. To that end, the Wagner Act sought to protect them from various employer impingements on the expression of the majority will; the Taft-Hartley amendments reflected Congress' awareness that union pressures also frustrated that will.

⁴ 92 NLRB 547 (1950).

⁵ 144 NLRB 1089 (1963).

⁶ 135 NLRB 250 (1962).

⁷ Under the terms of H.R. 100, a "construction site" can be any establishment of any kind in any industry, and in which virtually any remodeling, repair or decorating work, however minor and of however brief a duration, is performed by a union in the "construction industry".

In the area of unions' organizational and recognitional picketing, however, the means provided by the Taft-Hartley amendments were demonstrably inadequate to achieve this objective. The sole provision of Taft-Hartley which was designed to limit organizational picketing was Section 8(b)(4)(C). According to that Section, a union was free to engage in such picketing so long as the picketed employer was not then obligated to deal with another certified union. In all other cases, the unions' unlimited right to picket created a situation where the employers' response might depend alone on its ability to survive. Whether or not the union represented a majority of the employer's employees—and, indeed, those employees' interests generally—could be only ancillary factors to the employer.

Faced on the one hand with these considerations, and on the other with unions' right to the protection of First Amendment guarantees and industry gains already made, the Congress sought, in the 1959 amendments giving rise to Section 8(b)(7), to effect a workable compromise.

The scheme of that compromise focuses on the National Labor Relations Board's election procedure. In general, in Subsections 8(b)(7)(A) and (B), organizational and recognitional picketing are proscribed where elections either had been held and where they could not be held. Pursuant to Subsection (C), subject to a First Amendment publicity proviso, a union may avoid a finding that its picketing is unlawful when it files a timely petition for an election. And an employer may curtail the duration of a union's picketing by filing such a petition and a Charge himself. Consistently, the Board's rules provide for the holding of an expedited election when such a petition is filed.⁸

Efforts to understand the various parts and interrelationships of this complex Section have given rise to acknowledged confusion.⁹ Unfortunately, legislative history is of relatively little help. After its review of the debates, the Ninth Circuit was led to conclude that they were largely inconclusive and that they were made

"... by a comparatively small number of members of each House who were actively promoting clashing points of view ... [the legislative record] gives no weight to the views of a large majority who made no speeches but voted."¹⁰

There are, however, two ideas which permeate this statutory scheme and which are derivable from the objectives which 8(b)(7) sought to achieve, from the inherent logic of its components, and from legislators' comments. These are, *first*, an intention to limit picketing as a destructive form of union self-help where the Board can provide a workable alternative; and, *second*, the creation of Board election machinery which will constitute the substitute for that self-help. Representative Barden's remarks on the expedited election proviso illustrate this dual objective. That proviso's purpose was

"To enable an employer or the employees to obtain a prompt election instead of having to go through an indefinite and prolonged period of picket-line warfare, which could have the effect of placing the employer's business and the jobs of his employees in jeopardy."¹¹

That this duality of purpose reflected Congress' design for Section 8(b)(7) was explicitly acknowledged by the Board:

"The underlying statutory scheme . . . is to resolve disputed issues of majority status, whenever possible, by the machinery of a Board election."¹²

⁸ Rules and Regulations, Series 8, as amended, 102.73, et seq.

⁹ After enactment of this Section, John H. Fanning, a Board member, remarked: "Scarcely has legislation packed so many apparent close and difficult questions in a small amount of type." Speech before the New Orleans Federal Bar Association, October 19, 1959. After nearly a year of experience with this legislation, another Board member, Joseph A. Jenkins, concurred: "A mere examination of the language of that statute would cause anyone, layman or lawyer alike, to realize that there are a multitude of questions which can be and are being raised regarding its application and interpretation." Speech before Federal Bar Association Annual Convention, September, 1960.

Reaction of the Court has been similar. In *McLeod v. HREU, Local 89*, 280 F. 2d 760 (CA 2, 1960), for example, that Court noted "the confusing and somewhat self-defeating provisions of the Section"; another commented that it "presents a number of problems not readily solved by a reading of the 1959 Act." *McLeod v. Local 239, I.B.T.*, 179 F. Supp. 481 (DC NY, 1960).

¹⁰ *Barker Bros. v. N.L.R.B.*, 328 F. 2d 431, 437 (CA 9, 1964).

¹¹ Legislative History, Vol. 2, p. 1813.

¹² *Blinne Construction Co.*, 135 NLRB 1153.

The question arises with respect to Section 8(b)(7), whether the Board's decisions and procedures promote Congressional intent, which is understood to be a general desire to maximize the effective use of the Board's election machinery in organizational-recognitional picketing cases.

We conclude that the Board has not done so; that the Board has carved unnecessary exceptions to situations in which picketing might have been proscribed and elections held, and has permitted its election process to become so drawn out as to lose the protection against destructive self-help it was designed to be.

1. A union engaged in organizational picketing may avoid a finding that it violates the Act if it files an election petition "within a reasonable period of time not to exceed thirty days from the commencement of such picketing." One implication of this language is that a period of less than thirty days is envisioned as "reasonable" for the usual case. A review of the legislative history supports this view; otherwise Congress must be held to have intended the logical inconsistency that the usual case and the extraordinary case must be treated alike.¹³ Yet the Board has refused to require petitions to be filed in less than thirty days except in those situations in which picketing has been marked by violence, coercion, threats and other serious misconduct.¹⁴ Accordingly, in other situations and irrespective of the industry, the effect of picketing both on the employer's ability to survive and on the employees' right to an uncoerced free choice, are ignored byproducts of the Board's practice to interpret "reasonable period" to constitute precisely thirty days.

The extent to which this practice has subverted Congress' intention appears not merely from a reading of the text itself and from Representative Griffin's explanation of it. The testimony of then Secretary of Labor Mitchell on the interpretation to be accorded to the words "reasonable period" reveals that the definition of this period was to be flexible depending upon the extent of harm which the picketing inflicts on the particular employer's business.¹⁵ This is a factor which the Board has consistently ignored.

2. In addition to fostering needless delays in the filing of election petitions, the procedures which the Board has adopted for the disposition of those petitions has virtually destroyed their use as a substitute for "prolonged picket-line warfare."¹⁶

When a picketing union files an election petition, it may thus forestall the filing of an 8(b)(7) Charge by the picketed employer. In the absence of such a Charge, no expedited election is held. Accordingly, the usual machinery of Section 9 of the Act comes into play, including the necessity to establish an interest showing by the union; the right to litigate disputed unit and other issues in a hearing, whether raised genuinely or frivolously; the right to file objections after the election, and the right to appeal their resolution. Throughout this period, the union is privileged to continue picketing. This result is a specific and unnecessary Board creation. For example, the usual election rule under Section 9(c)(3) provides that no election may be held for twelve months from the date of a valid election. The twelve-month rule appearing in Section 8(b)(7)(B) is not, in terms, inconsistent. Nonetheless, the Board has determined that for purposes of 8(b)(7)(B), the twelve-month limitation period on picketing shall commence not from the date of the election, but from the date of the Board's ultimate certification of the results of such an election, thus lengthening the period during which such picketing may be conducted.¹⁷

¹³ Representative Griffin gave the following interpretation of this language: "Of course, the picketing may be enjoined in less than thirty days if the Board finds the circumstances are such as to make it unreasonable to permit it to continue and it must be stopped at the end of thirty days." Legislative History, Vol. 2, p. 1812; *N.L.R.B. v. Local 239, I.B.T.*, 289 F.2d 41 (CA 2, 1961).

¹⁴ *Cuneo v. Shoe Workers*, 181 F. Supp. 324 (DC NJ, 1960); holding a ten day period unreasonable delay; *District 65, Retail Wholesale & Department Store Union*, 141 NLRB 991, holding twenty-six days to constitute an unreasonable period.

¹⁵ "For example, picketing a small-store owner, whose livelihood depends on the daily receipts of merchandise and the daily outgo of merchandise, a reasonable time for picketing there might be a very short one because the very life of the business is involved in the activity of the pickets."

"On the other hand, picketing of a factory in the outskirts of the city which does not receive merchandise very often or does not ship it very often, the length of time—the reasonable length of time might be longer." Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, 86th Cong., 1st Session, p. 315.

¹⁶ These procedures were set out in detail by the Board in its second decision in *Blunne Construction Co.*, 135 NLRB 1153.

¹⁷ *Irving, Inc. (Local 392, Retail Clerks)*, 134 NLRB 686.

The union may, at its option, cause even additional delay. Should the union file unfair labor practice charges against the picketed employer, it would serve to block the election. The petition is then held in abeyance while the charges are investigated. Picketing may continue during investigation. If the charges are deemed to have merit, the petition continues to be held in abeyance while picketing continues. If the charges are dismissed, the processing of the petition resumes, permitting the union to employ the delaying tactics described above. Still, the picketing continues.

Moreover, the Board has determined that when a union files meritorious refusal-to-bargain charges against an employer, it is excused from filing any petition at all, notwithstanding that it was engaged in organizational picketing. This result was reached over the strongest dissent by Board members Leedom and Rogers, who found in it an unauthorized departure from Congressional purpose constituting still another instance whereunder organizational picketing is protected at the expense of effective and expeditious use of the Board's election machinery.¹⁸ While at least one District Court has approved the majority's result, such approval was based on the belief that it was an acceptable exercise of discretion.¹⁹ Presumably, the adoption of the minority view would also have been acceptable. While either result would be legally permissible, the issue of wisdom and policy was, at best, left open for argument.

3. In addition to the procedural roadblocks which the Board has placed in the way of the effective use of its election processes, the Board has added certain substantive ones. The problem stems from the effect to be given the second proviso to Section 8(b) (7) (C), the so-called publicity proviso, which exempts picketing whose "purpose" is truthful publicity concerning an employer's non-union status or the absence of a labor contract, from the proscription against picketing whose "object" is recognitional.

The specific issues presented are (1) whether picketing to protest an employer's sub-standard conditions or his alleged unfair labor practices falls within the general proscription against organizational picketing; and (2) whether picketing which protests an employer's non-union status or the absence of a collective bargaining agreement, but which also has an organizational object, falls within the proviso permitting publicity picketing or into the proscription prohibiting organizational picketing.

In the first *Calumet Contractors* decision,²⁰ the Board sought to come to grips with the first of these issues. It held that when a union picketed to publicize substandard conditions of an employer then recognizing another certified union, such picketing had a recognitional or bargaining objective within the meaning of Section 8(b) (4) (C). Similarly, in *Lewis Food Co.*, 115 NLRB 890, the Board held that picketing to compel reinstatement of a discriminatorily discharged employee, where another union had been certified, also violated Section 8(b) (4) (C) as "necessarily" having a recognitional object. The significance of these decisions is that they appear to hold that when a union pickets to achieve some end customarily associated with what a representative bargains or grieves about—whether relating to substandard conditions or alleged unfair labor practices—that they thereby seek to achieve a recognitional or bargaining objective.

When Congress enacted Section 8(b) (7), which in effect expanded 8(b) (4) (C), it presumably was aware of these decisions and having failed to state any disagreement with them, may fairly be said to have intended to impart them into 8(b) (7).

Accordingly, the Trial Examiner, in *Claude Everett Construction Co.*,²¹ held that when a union picketed to protest substandard wages and threatened to continue to picket until prevailing wage rates were paid, this constituted recognitional or bargaining picketing, citing *Calumet Contractors*. In the absence of a timely petition filed by the union, a violation of 8(b) (7) (C) was found.

However, a newly constituted Board, with a different policy perspective, denied the logic of these decisions and revised the law. In quick succession, that Board reversed *Calumet Contractors*,²² reversed the holding of *Lewis*, *supra*,²³ rendered its *Claude Everett* decision,²⁴ reversing the Trial Examiner and decided

¹⁸ *Blinne, supra*.

¹⁹ *Robert P. Scott, Inc. v. Rothman*, 46 LRRM 2793 (DC DC, 1960).

²⁰ 130 NLRB 78.

²¹ 136 NLRB 321.

²² 133 NLRB 512.

²³ *Fanelli Ford Sales*, 133 NLRB 146S.

²⁴ 136 NLRB 321.

that picketing solely to publicize an employer's unfair labor practices had no recognitional object.²⁵ The last holding is particularly suspect inasmuch as the bill passed by the Senate prior to the final enactment of 8(b)(7) contained a proposal that any employer unfair labor practice would constitute a defense to a union's charged violation of 8(b)(7). This proposal was rejected, giving rise at least to the inference that a union's picketing to "inform" that the picketed employer violated the Act was understood and intended by Congress to constitute organizational picketing.²⁶

The significance of these changes in that picketing which had been considered to have an *inherently* recognitional object now is no longer so considered. In the absence of *other* evidence tending to establish a recognitional object, such picketing is beyond the reach of any 8(b)(7) sanctions. Hence, the Board in the exercise of its prerogative to change its mind, changed it in the direction of reducing the effectiveness of 8(b)(7) to restrict picketing and encourage resort to the Board's election machinery.

With respect to the second issue, the Board has again engaged in a process of mind-changing which has yielded similar results in reducing the effectiveness of 8(b)(7). As noted before, this issue relates to picketing which has a dual purpose, one of which is permitted in the publicity proviso while the other is prohibited in the Section's general reference to organizational picketing.

In the first *Crown Cafeteria* decision,²⁷ the Board majority held that such "dual-purpose" picketing was unlawful. All that was permitted, the majority held, was picketing that had the *sole* purpose of advising the public, without other evidence of recognitional object.

After a change in Board membership, this interpretation was reversed on reconsideration. In the second *Crown* decision,²⁸ all members apparently agreed that a union engaging in informational picketing normally had an objective of obtaining recognition ultimately and that such picketing was within the protection of the proviso, despite this *ultimate* objective.

The split between the majority and minority concerned the situation where the picket signs and the manner of picketing conform to the proviso but there is independent evidence that the union also had a *present* objective of obtaining recognition.

In view of the Board minority, the picketing lost the protection of the proviso when there was other evidence that the union was seeking to organize the employees or achieve recognition. The majority, however, saw no basis for a distinction between an assumed objective of ultimately obtaining recognition and direct evidence of a recognition objective. In either case, the proviso protected picketing that also had the purpose of informing the public.

Indeed, in the majority's view:

"We might well concede that in the long view all union activity, including strikes and picketing, has the ultimate economic objective of organization and bargaining."

Thus, the Board succeeded in contracting the scope of 8(b)(7) and increased unions' right to picket to obtain recognition, all in conflict with Congress' purpose in enacting that Section. While the view of the Board majority received the approval of an appellate court,²⁹ it was rejected by Congressmen Landrum and Griffin as being antithetical to the intent of Congress.³⁰

Pursuant to the approach of the Board majority in *Crown*, the principal difficulty in dual-purpose picketing cases is to determine if the purpose is really "dual"; that is whether the picketing is "for the purpose of truthfully advising the public" within the meaning of the proviso or whether such an alleged purpose is merely sham to mask a recognitional object. Picketing that purports to be informational is not protected by the proviso if the union *in fact* does not

²⁵ *Blinne, supra*.

²⁶ Legislative History, Vol. 1, p. 584.

²⁷ 130 NLRB 570.

²⁸ 135 NLRB 1183.

²⁹ *Smitley d/b/a Crown Cafeteria v. N.L.R.B.*, 327 F.2d 251 (CA 9, 1964).

³⁰ The extent to which this is true is reflected in the fact that on April 10, 1962, Congressmen Landrum and Griffin addressed the House of Representatives and stated, in part: "The pattern of recent decisions by the N.L.R.B. gives rise to a serious concern that policies laid down by Congress in the Taft-Hartley and Landrum-Griffin Acts, are being distorted and frustrated, to say the very least." 108 Cong. Rec. v. No. 55, 87th Congress, 2nd Session, 5699-5700.

have a purpose of advising the public. In ascertaining the union's tactical purposes, a distinction between these two categories of picketing has been made:

Signal picketing, where the union's purpose is to use the picket line as a signal to obtain organized economic action backed by union discipline, thereby halting pick-ups, deliveries and other services by neutrals.

True publicity picketing, which appeals only to employees of the primary employer and to the unorganized public for spontaneous popular support.

Using this distinction, it has been held that signal picketing is not protected by the proviso and is unlawful if it has recognition or organization as an object. True publicity picketing is protected, however, unless it actually interferes with deliveries or communicates more than the limited information expressly permitted by the proviso, notwithstanding the pressure of an organizational object.³¹

Illustrative of the manner in which this distinction does, or does not, operate, are the so-called area-standards picketing cases. In its decision in *Claude Everett Construction Co.*,³² the Board held that no violation of 8(b)(7)(C) had occurred because the union was picketing, according to the legend on its sign, to protest "substandard wages and conditions being paid on this job by the Claude Everett Company." It found that the union's objective was to induce the company to raise its wage scale to that prevailing in that area, and thus the picketing was protected notwithstanding its interference with pickups and deliveries on the project.

In *Texarkana Construction Co.*,³³ before picketing, the union asked the employer whether "union men" were to be employed on the project. Receiving a negative answer, the union commenced picketing with signs stating that the employer was not "paying prevailing wage rate". The employer was in fact paying wages lower than the ratio determined under the Davis-Bacon Act, and lower than the picketing union's scale. The Board brushed aside the union's initial inquiry regarding the hiring of union men and held that the union's picketing was not for organization or representation purposes. In *Keith Riggs Plumbing and Heating Contractor*,³⁴ picketing was held to be a legitimate protest of substandard conditions, notwithstanding the fact that the union solicited membership from the employer's employees several weeks before the picketing began and several of the employees joined the union after the picketing began.

Finally, in *Local 741, Plumbers*,³⁵ picketing to protest substandard conditions remained lawful according to the Board, although (1) several employees joined the union after the picketing began, and (2) the union business agent mentioned the advantages of union membership in discussing other topics with an employee. These incidents did not establish that the union's real objective was organizational, held the Board, so that the picketing was and remained informational in nature, hence exempt from the proscription of 8(b)(7).

An analysis of the Board's handling of 8(b)(7)(C) and its publicity proviso yields the following judgments. The Congressional debates leading to the passage of 8(b)(7) failed to disavow existing Board authority which held that a union engages in recognitional picketing when it attempts to achieve through picketing what is otherwise the function of a bargaining representative. This failure most strongly implied that Congress intended 8(b)(7) to reflect that view. Post-passage Board precedent holding such picketing to be merely informational in nature, contravenes Congress' intent.³⁶ The Board's approach is really quite artificial since any unorganized employer which is picketed, whether the picketing be labeled informational, area-standards, or whatever, believes that the union's object is organizational. Such employer's decision and its employees' decision is governed by that belief. Moreover, to perpetuate a distinction between information and organizational-recognitional picketing, encourages unions to engage in verbal sham; picket signs and conversations may be tailored to satisfy the distinction while, in fact, all parties behave as if the organizational object is explicit. Unfortunately, the Board has tended to encourage these fictions. As an analysis of such cases as *Texarkana*, *supra*, and *Local 741, Plumbers*, *supra*, reveals, the Board has exhibited some tendency to avoid finding the existence of a recognitional object despite independent evidence of such an object, by according undue weight to the self-serving terms of unions' picket signs. Therefore, in-

³¹ This approach has received Board and court approval, *Electrical Workers Union*, 144 NLRB 5; *N.L.R.B. v. Local 3, I.B.E.W.*, 317 F.2d, 193 (CA 2, 1963); and *Smitley*, *supra*, at footnote #22.

³² 136 NLRB 321.

³³ 138 NLRB 102.

³⁴ 137 NLRB 1125.

³⁵ 137 NLRB 1125.

stead of moving the parties closer to an election as the method by which representational decisions are to be made, the Board's rule-changing has moved them farther apart.

This conclusion is particularly apt in connection with the Board's revised treatment of area-standards picketing. To pretend that such picketing is not inherently organizational, hence is outside the reach of 8(b)(7), gives rise to two undesirable results. First, it induces unorganized employers to recognize picketing unions because they are subject to economic pressures without an opportunity to file meritorious 8(b)(7) Charges and obtain expedited elections. Second, where the picketed employer is already recognized, it results in a situation where represented employees' working conditions are affected or established by a union other than their own. Finally, the distinction between signal and publicity picketing, as a means for determining a union's true object, is similarly suspect. Whether a union appeals to consumers or to other union members may only relate to which approach it believes to be more efficacious in achieving its recognition object. In any event, the effect on the picketed employer is the same, whatever the pressure's source.

The purpose of this analysis has been to spotlight several areas in which the Board's procedures and policy choices have inhibited Congress' intent to limit union self-help and to promote the use of Board election machinery. The following proposals are designed to effect a return to the statutory objectives. Inasmuch as the Board is not likely to adopt them, or any of them, unilaterally, Congress is urged to compel their adoption by amendment of the statute.

1. The problems created by the Board's view of the nature and limits of the information proviso of 8(b)(7)(C) suggests the wisdom of eliminating subparagraph (C) altogether and amending Section 9 of The Act to provide for an expedited election on petition either of a picketed employer or his employees whenever the Regional Director has reasonable cause to believe (i) the object of picketing is organizational, and (ii) the picketing has been conducted for a reasonable period not to exceed thirty days.

2. The prohibition in Section 8(b)(7)(B) against picketing for twelve months from the holding of a valid election should have reference to the date of the election and not the date of certification of results.

3. When a union engaging in recognition picketing files a petition within the thirty day period, consideration should be given to processing that petition only on condition the picketing ceases.

4. In considering what constitutes a "reasonable period of time" under Section 8(b)(7)(C), thirty days should be considered a maximum period rather than a norm, and the same tests which are used in determining whether courts should issue temporary restraining orders should be employed in fixing what constitutes a "reasonable period" in any given case.

5. Consideration should be given to a proposal such as has been made by Professor Cox that picketing which protests alleged unfair labor practices or substandard conditions should be construed to be organizational, subject to a showing by the picketing union that the purpose being pursued is one which is of demonstrable consequence to the union's standards or its members' welfare.

6. Even should no other proposal be adopted, the Board should be compelled to return to the conclusion reached in the first *Crown* case: Specifically, when a picketing union has a dual objective of informing the public and seeking recognition, such picketing should fall within the proscription of 8(b)(7)(C) whenever the recognition object is immediate. Conversely, dual-purpose picketing should be permissible under the publicity proviso to subparagraph (C) only when the union's *sole immediate* purpose is advising the public.

C. THE NEED FOR AN ADDITIONAL REMEDY FOR UNIONS' VIOLATION OF SECTION 8 (B) (7)

In addition to the proposals made in the last preceding section, we believe a further amendment of the statute, requiring separate attention, is appropriate in order to render meaningful the prohibitions against picketing in Section 8(b)(7).

Unions have frequently contended, before Congress and elsewhere, that the Board is remiss in failing to invent and expand remedies in order to make them more meaningful and effective against employers who violate the Act. This was, indeed, the subject of inquiry in House Hearings on H.R. 11725 in the 90th Congress, which was designed to increase the effectiveness of Board remedies. Moreover, the Board currently had under consideration a number of

decisions of its Trial Examiners in which such remedies have been devised.⁹⁰ Each of these remedies has run against employers, none against unions.

Although no reasonable person objects to the imposition of appropriate remedies against employers who commit unfair labor practices, it would appear that the Board ought to be equally vigilant in devising appropriate remedies against unions which similarly engage in violations of law and which cause losses of wages and income to employers and individual employees.

Currently, the Board does not provide a back-pay or loss of profits remedy against unions in cases in which losses have occurred as a consequence of an illegal picket line or an illegal secondary boycott or an illegal jurisdictional strike or an illegal strike against a certification or for recognition. Although Section 303 of the Act does confer concurrent jurisdiction on courts to adjudicate damage suits brought by those who are victimized by unions' violation of Section 8(b) (4), no such concurrent remedy is afforded for a violation of Section 8(b) (7). Thus Congress and the Board share equally in failing to provide an effective deterrent to those unions which are prepared to commit violations of Section 8(b) (7) and who need fear neither the imposition of penalties therefor, nor even the requirement to restore the economic status quo.

The need for such a remedy is manifest. Apart from its deterrent effect, one need only imagine the situation of an employee whose layoff results as a consequence of unlawful picketing under Section 8(b) (7) which injures or shuts down his employer's business. There is no sound basis for requiring either the employee or his employer to bear their losses without recourse in back pay or damages.

Although the Board now possesses the authority, pursuant to the board remedial provisions in the Act, to impose appropriate remedies, it has not done so. This remains true despite the Board's continuing efforts to create ever more stringent remedies for employers' violations of law.

Consequently, Congress is urged to intervene and to provide for the needed relief from unions' violations of Section 8(b) (7). This may be done either by amendment of Section 10 or 8(b) (7) itself, or by the creation of a new Section analogous to Section 303, or by both.

D. THE SPECIFICATION OF TESTS BY WHICH TO IDENTIFY INTRA-CORPORATE "NEUTRALS" OR "PERSONS" WITHIN THE MEANING OF SECTIONS (b) (4) OF THE ACT

An important issue in the evolution of rules involving secondary boycotts is currently before the Board as a result of two conflicting Trial Examiners' decisions. The conflict concerns the status to be accorded unincorporated divisions of large corporate operations within the meaning of Section 8(b) (4). The problem arises when such a division is picketed pursuant to a labor dispute involving only the parent. May these divisions be considered "neutral employers" or "persons" within the meaning of 8(b) (4) so that the picketing becomes secondary and unlawful; or do they forfeit any right to be regarded as separate in view of the fact of their ownership?

It is our view that such divisions, which operate with substantial independence and autonomy, and which are neither closely integrated into the operations of the parent nor controlled by it in their day to day operations, should be accorded the status of separate entities and unique "persons" within the meaning of 8(b) (4). There is no longer any question that the test of "integration and actual control" is employed to determine whether wholly owned subsidiary corporations are separate "persons" under 8(b) (4).⁹¹ It would constitute a pointless triumph of appearance over substance to require a different test merely because the owned entity did not possess a corporate form.

In *American Federation of Television and Radio Artists (AFTRA)*,⁹² this issue, which is of great concern to our larger operations, was resolved in favor of treating all owned enterprises alike in that the focus of attention should be directed towards their degree of independence rather than their form.

"... Viewed in the light of the legislative history of the section, the breadth of protection afforded by it, the liberal construction given to the term 'person' by the Board and courts, and the fact that it is the substance and not form

⁹⁰ These include the Trial Examiners' decisions in the *ExCello Corp.* and *Zinke Foods*, cases, among others, 64 LRRM 2078.

⁹¹ For example, *J. G. Roy and Sons Co. v. N.L.R.B.*, 251 F. 2d 771 (CA 1, 1958); *Bachman Machine Company v. N.L.R.B.*, 226 F. 2d 599 (CA 8, 1959); *Miami Newspaper Pressman's Local v. N.L.R.B.*, 322 F. 2d 405 (CA D. C., 1963); and *Poole's Warehousing, Inc.*, 158 NLRB 1281 (1966).

⁹² Case No. 5-CC-446 (TXD 775-68).

or structure of the employing entity to which the Board and courts look in determining obligations and benefits under the National Labor Relations Act, I see no reason in principle why the term 'person' should not be interpreted to comprehend in circumstances such as here, a division of a corporation not itself qualifying as a 'legal entity' under technical, common law concepts."

Unfortunately, another Trial Examiner in *Los Angeles Newspaper Guild, et al. (Hearst)*,³⁹ took a much narrower view of the definition of "person" as related to unincorporated divisions of corporate entities, in holding that a "division" was not a separate enterprise but only a description of the parent's mode of doing business.

The latter holding will encourage unions to picket enterprises whose functional and operational independence from their parent exceeds that of many subsidiary corporations which are insulated from such picketing by virtue of the irrelevance of their different mode of creation.

To the extent the Board refuses to adopt the better reasoned views expressed in *AFTRA*, Congress should move to compel the Board to do so.

E. PICKET SIGN MISREPRESENTATION

The previous sections of this presentation have questioned *whether* unions may permissibly picket in certain described situations; the focus here is on the *manner* in which they may picket. More specifically, the issue is whether unions should be permitted to picket where the picket signs contain substantial misrepresentations.

At present, there is no remedy available under the National Labor Relations Act against a union which elects to picket an employer with picket signs containing false statements about that employer or his activities. The General Counsel of the Board takes the position that unless the picketing is for a clearly proscribed object, the picketing is lawful unless conducted in a violent manner. Under this interpretation, any picketing conducted in a non-violent manner for a lawful object is permissible regardless of how misleading or defaming the communication contained in the picket sign language may be. Since Section 8(b) (1) (A) of the Act is designed to protect *employees* against restraint and coercion engaged in by unions, then the distinction between physical restraint and mental or intellectual coercion which necessarily results from exempting the effects of untruthful picket sign language from the operation of that section appears to be unrealistic.

In confining the sanctions of Section 8(b) (1) (A) to union activities involving violence, intimidation and reprisal or threats thereof, the General Counsel of the Board confines himself to a most limited and restricted view of that Section of the Act. This interpretation has been rejected by the United States Supreme Court in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*,⁴⁰ wherein the Court took the view that Section 8(b) (1) (A) was not to be read in a narrow, restrictive or literal sense.

Similarly, the General Counsel's current view seems to be at variance with the legislative philosophy which impelled enactment of the Section. Senator Ball, when proposing Section 8(b) (1) (A) as an amendment to the senate bill, stated:

"The purpose of the amendments is simply to provide that where unions, in their organizational campaigns, indulge in practices which, if an employer indulged in them, would be unfair labor practices, such as making threats or false promises or *false statements*, the unions also shall be guilty of unfair labor practices." (Emphasis added.)⁴¹

Notwithstanding this apparently clear statement of legislative intent, under current Board law a union may utilize placards stating, "Workers of Employer John Doe On Strike For Unfair Labor Practices", and then sign the name of the union, and even if there are no workers in fact on strike and even if the employer in fact committed no unfair labor practices and even if the union whose name appears on the sign is not the union doing the picketing, nevertheless the General Counsel refuses to issue a complaint and consequently the Board can find no violation. However, the economic realities are such that in the situation described, truck drivers, the employees of a neutral employer, will turn away upon seeing this type of sign every bit as much as if they were physically coerced

³⁹ Case No. 21-CC-1043 (TXD (SF) 44-69).

⁴⁰ 388 U.S. 175 (1967).

⁴¹ 93 Cong. Rec. 4016; II Leg. Hist. 1018.

into turning away. Yet there is no doubt that were an *employer* to engage in comparable misrepresentation under the provisions of Section 8(a)(1) of the Act, he would be held to have committed violative conduct proscribed by the Act, or by the Board's interpretation of the Act.

This is not to say that the right to picket for lawful objectives should be circumscribed. However, the means by which these objectives are pursued may be fairly regulated. No party has a vested interest in the right to misrepresent either in representation matters or in unfair labor practice cases. Yet the Board appears to have granted unions a form of immunity in this area. With respect to representation cases, this immunity is based upon the dubious assumption that unions' misrepresentations are not taken seriously. The basis for such an immunity in picket sign misrepresentation has not been stated. If the rationale is similar it is wholly unrealistic both with respect to its impact on consumers as well as on neutral employers' employees.

One explanation for the permissive state of the current law on picket sign misrepresentation traces to the refusal by the General Counsel to issue complaints alleging such conduct to violate Section 8(b)(1)(A) of the Act. While a certain reasonable exercise of discretion to refuse to issue complaints must inhere to the General Counsel, that discretion should have rational, impartial limits. In his testimony last year before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, the General Counsel described, as one of his functions, the duty to explore and examine the farthest reaches of the law. It would appear that his refusal to issue complaints in picket sign misrepresentation cases is inconsistent with the existence of such a function. That fact, together with the Board's similar reluctance to give due weight to the pernicious consequences of union election campaign misrepresentation, suggests that in the area of "free speech" there exists a blind spot in the agency which the Congress itself is required to cure.

Since the Supreme Court has repeatedly held that picketing is not synonymous with "speech" but, instead, represents a "hybrid",⁴² unions cannot claim any Constitutional protection against the imposition of sanctions resulting from their misrepresentations on picket signs. Since such misrepresentations can obviously exert a coercive impact both upon those it misrepresents or defames as well as customers or other employees who see it and lack the information to evaluate its truth or falsity, therefore sanctions should be imposed. As the Board, through its General Counsel, refuses to do so, it is incumbent upon Congress to act.

Accordingly, Congress should declare its view, by amendment or otherwise, that whenever picket signs contain substantial misrepresentations which could reasonably exert a coercive effect on the employees of any employer, then such misrepresentations constitute an unfair labor practice under Section 8(b)(1)(A) of the Act. As such, they may give rise to a back-pay remedy, if appropriate, and may be enjoined if they continue and threaten irreparable harm.

STATEMENT OF DON GILCHRIST, EXECUTIVE VICE PRESIDENT, HOME
MANUFACTURERS ASSOCIATION

Mr. Chairman and Members of the subcommittee:

My name is Don Gilchrist. I am Executive Vice President of the Home Manufacturers Association with headquarter offices in Washington, D.C.

The Home Manufacturers Association represents the producers of factory-built housing ranging from that for low income groups up to and including what may be termed luxury housing, all by an increasingly efficient process of industrialization. Our membership further includes most of the major national corporations furnishing raw materials to the housing industry, as well as many smaller suppliers.

The home manufacturing industry spans a technology resulting in products ranging from structural framing components, such as roof trusses and open wall, floor and ceiling framing sections, to the complete, panelized house "package," to the newer sectionalized or modular housing unit. In its panelized, "packaged home" form, the product will represent up to 40 percent of the cost of a finished home (exclusive of land), while modular units will run to as much as 90 percent of the completed unit cost. It is the latter technology which may be solely capable of producing much of the low and moderate income housing in volumes you specified in the 1968 Magna Carta of Housing.

⁴² See the first section of this paper.

It is perhaps for this reason alone that our testimony with respect to the concerns of your Subcommittee should be given great weight in your deliberation on legislation which would legalize common situs picketing and the inevitable resulting secondary boycott.

While the legislative proposals concern themselves primarily with job site picketing, we want you to consider our concern, for virtually all manufactured housing is erected and marketed by and through home builders who are in effect the manufacturers' dealer, and who *are* directly affected by the legislation, *and because the manufactured home represents about 30 percent of one- and two-family housing being built today.*

It would be a frivolous use of your time to enumerate once again the statistics about rising labor rates and their effect on construction costs, but more important, the *affordability* of housing, crucially in the low and moderate income levels, which was your obvious social concern in passing Housing Act. It is *this* housing which may *only* be produced by the process of industrialization, and the unrestrained development of this industry and its contribution to *national goals set by you* must be the enlightened concern of the legislature, liberal or conservative, and the building trades unions whose interests the proposed legislation would serve.

The most ardent conservative today could scarcely decry the reason d'être for organized labor, yet can the most liberal deny the existence of imbalance in the scale of bargaining in the building trades? Where one trade follows another in its quest for ever-higher wages and benefits, and with the power to collectively or in succession, tie up the construction industry for days . . . weeks . . . months? And in unbridled action, thus suffocate the economy of a city, a state, or a country?

We believe in the right of a single trade union to negotiate, and the now rarely-needed justification of the strike as a results-oriented tactic. It is in view of this right that existing law permits a union to strike a *single* contractor or subcontractor, yet insure that one man's quarrel does not lay bare the table of his coworker. . . . or one contractor's negotiations strangle the business of another who most assuredly will face the same negotiations at a later date.

There is still, hopefully, such a concern as common good. Common good provided a climate in which trade unions grew to maturity. . . . common good motivated your passage of the Housing Act. . . . and common good must certainly move you to resist any further encroachment on our ability to serve this common good need, by adding further to the imbalance of power between those who have invested their capital in the construction industry and those who have no such investment . . . between those who must stand alone and those who may act, if not in concert, in orderly succession.

There is yet within the building trades in many areas, a disposition to resist the inevitable and patently necessary growth in the use of prefabricated, factory-made assemblies or sub-assemblies . . . this ironically from a "work preservation" philosophy on the part of those who, *by their own admission*, haven't sufficient hands to accomplish the work which *now* exists. Passage of the legislation under consideration would only abet these tactics.

The rising costs of materials and money are driving the costs of housing further and further beyond the affordable reach of more and more people. The laws of economics will obviously continue this trend more than is healthy, without our adding any further leverage to labor's bargaining power.

Our Industry hopes that your individual and collective judgment in this latest in an ill-advised succession of attempts to enact legislation which does *not* serve common good . . . will be to again recommend its abandonment as unwise.

STATEMENT OF REED LARSON, EXECUTIVE VICE PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE, WASHINGTON, D.C.

The National Right to Work Committee, as a representative citizens organization with a single purpose, is dedicated to the restoration and preservation of the individual citizen's right to earn his livelihood as either a union member or a non-union worker.

H.R. 100, the bill to increase picketing privileges for union organizers, is aimed in precisely the wrong direction. It adds to the already-enormous list of special privileges enjoyed by union officials, while further restricting the rights of working men and women.

Instead of granting additional special privileges to union officials, we believe Congress should be seeking ways to protect the rights of working people, millions of whom are compelled to financially support the wide-ranging schemes of union officials in order to earn a living.

If enacted into law in its present form, H.R. 100 would nullify the U.S. Supreme Court's 1951 ruling in the *Denver Building Trades* case. This litigation was triggered by union-sponsored picketing conducted to protest the presence of non-union electricians on a construction site. The National Labor Relations Board ruled this picketing was an unfair labor practice in violation of the National Labor Relations Act's prohibition on secondary boycotts. Its decision was subsequently upheld by the Supreme Court.

The NLRA's ban on secondary boycotts was designed to enable neutral employers and employees in the construction field to maintain their neutrality. It obliges a union to confine its picketing to the employer with which it has a dispute. H.R. 100 would permit one union to strike all employers on a construction site if it has a lawful dispute with any one of these employers. To the detriment of employees and employers alike, it would sanction virtually unrestricted picketing of an entire construction project.

Enactment of H.R. 100 in its present form, we feel, would undermine the protection which the sponsors of the National Labor Relations Act intended to provide individual workers. The underlying purpose of the Act, which H.R. 100 would amend, was to safeguard the rights of workers against abuse by either employers or by labor unions. Under the Act as it was originally adopted, unions could claim rights and privileges only as the duly-elected representatives of the workers. Thus the rights of unions were derived from the rights of individual workers.

It is especially ironic that the added privilege proposed by H.R. 100 should be considered for union organizers in the construction industry. Construction unions already enjoy special treatment, having been granted legal protection of some of the most oppressive devices for forcing compulsory union membership on unwilling workers. Even the facade of union democracy, with which officials of many industrial unions attempt to justify the firing of workers who refuse to pay dues to union treasuries, has been stricken from the law covering building and construction unions.

Under the peculiar privileges granted to construction industry unions, workers are even denied a voice in the selection of a union to which they are compelled to pay money. Section 8(f) of the National Labor Relations Act provides that employees and union officials "engaged primarily in the building and construction industry" may enter into pre-hire agreements, providing for a seven-day compulsory union shop and the union hiring hall. This means that an employer and a union official can sign compulsory union membership agreements without the consent of even a single employee who is or will be covered by such an agreement. Furthermore, it is legal for an employer and a union official to agree that all employees will be obtained through the union hiring hall. This is compulsory unionism with a vengeance!

And now, in H.R. 100, Congress is considering granting a greatly-increased picketing privilege which union officials will exploit to pressure additional employers into signing this most oppressive form of compulsory union shop contract.

The fallacy relied upon by those persons who would invest labor unions with unlimited power is the false premise that employees invariably benefit from representation by labor unions.

With the exception of persons blinded by a fanatical pro-union bias, everyone recognizes the existence of both worthy and unworthy labor organizations. Some workers derive genuine benefits from the collective bargaining process; other workers are harmed by union representation.

The wage-earner, the man who pays the dues, is the only person qualified to decide whether or not a union is worthy of his support. Compulsory unionism, which is commonplace in the construction industry, forces the worker to pay money to a union even though he believes its salaried officials are dishonest, corrupt, lazy or incompetent.

Many union members object vehemently to the misuse of their compulsory dues for political purposes. A citizen is effectively stripped of his political freedom when he is compelled, under threat of discharge, to provide money which is then used by others to defeat candidates and causes he favors.

While we see no need to increase the picketing privileges for the organizers of construction industry unions, our organization does not oppose such a pro-

posal provided it does not add another weapon to the already formidable arsenal used by union officials to compel unwilling workers to pay dues to union treasuries—dues which will be used in a wide variety of lobbying, political, and other causes to which many working men are opposed.

Therefore, we appeal to this Committee to amend H.R. 100 by including a provision which will protect the rights of working people at the same time new privileges are granted to union organizers. We suggest that H.R. 100 be amended to provide that no employee in the building or construction industry can be compelled as a condition of employment to join or pay money to any labor union, political party, or other private organization.

STATEMENT OF WILLIAM C. McCAMANT, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF WHOLESALERS

My name is William C. McCamant, and I am Director of Public Affairs of the National Association of Wholesalers. The Association is a federation of 59 commodity line wholesale associations, including many whose members sell both finished and unfinished materials, supplies, equipment and parts for the construction of, and installation in, buildings and homes. The association is opposed to enactment of H.R. 100, a bill to amend the National Labor Relations Act with respect to picketing at construction sites.

We recognize that for many years, the labor unions have sought an amendment to the National Labor Relations Act for the purpose of legalizing common situs picketing. We also recognize that the Congress has wisely refrained from adopting such an amendment to the Act.

The construction of buildings and homes requires an orderly schedule for the delivery of materials and equipment to construction sites. The scheduling of such is usually the responsibility of subcontractors working on the various specialties, under a general plan directed by the general contractor. Such materials and equipment are ordered by subcontractors, customarily from wholesaler-distributors who serve the building and construction industry. Orders for delivery are placed well in advance to assure their arrival to the building site at the precise time of need. Early delivery of supplies could result in expensive rehandling or reloading charges, and subject expensive equipment to the hazards of weather, damage and theft. The late delivery would result in expensive delays, often holding up a long array of building tasks which must follow that operation for which the particular supplies are required. Accordingly, the wholesaler-distributors to the building and construction industry are most concerned with changes in labor law which could result in an increase in the already too frequent labor disputes at building sites.

When the National Labor Relations Act was enacted, it provided that secondary boycotts be banned. These boycotts have for their purpose, the entanglement of third parties, parties who are not part of the labor dispute, being neither the employer nor the employees. We cannot believe that providing for picketing, that would halt the progress of construction by employees who are not a party to the dispute, is either justified or necessary. It would reestablish the secondary boycott, which proved so injurious to the public interest that it was banned in 1947.

Do construction unions need what some have referred to as an equalization of bargaining power? Are construction unions really weak in comparison with construction employers? Both the long and short history of wage rates for the construction industry provide a more sound basis for analysis than mere rhetoric. The 1968 *Statistical Abstract of the United States* (page 231) reports that, expressed in 1967 prices, hourly earnings in manufacturing rose 41% between 1950 and 1967, while hourly earnings in contract construction increased 60% during the same period. This does not lend evidence to the claim that construction worker unions lack bargaining power. Further, the same source (page 221) indicates that the average hourly earnings in construction between 1960 and 1967 increased 33% compared to an increase of 25% for manufacturing.

We are well acquainted with the plea of labor unions that the ban on common situs picketing has handicapped their bargaining. But the evidence of their bargaining power is graphically written in the bargaining agreements they have achieved, in the records of their earnings, and in the prices now required for buildings and homes.

Hopefully, this nation is embarked on an extensive housing construction program, so urgently required to shelter a growing nation. It is well known that new construction in the past five years has not kept abreast of need. Certainly, granting, to construction unions a coercive weapon as powerful as common situs picketing will not assist in the achievement of that national goal. The same need exists for industrial and commercial construction. The continued orderly scheduling of commercial and industrial construction will not be advanced with a change in labor law that would create an opportunity for secondary boycotts, that would allow one labor dispute to halt the work of those not a party to the dispute.

Indeed, this really is the issue with respect to common situs picketing. Should construction unions have the right to halt the work of those not a party? There is no sound reason for any departure from the principle that the secondary boycott is destructive and must remain outlawed.

We urge that the Congress reject the proposal contained in H.R. 100, and retain the ban against common situs picketing.

STATEMENT SUBMITTED BY THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION

This statement is submitted on behalf of the National Automobile Dealers Association, whose membership is comprised of nearly 22,000 franchised new car and truck dealers, engaged in selling goods and services in their respective communities to local consumers.

The Association is opposed to the provisions of H.R. 100, which would eliminate the ban on so-called common situs picketing. The bill would legalize secondary boycotts at construction sites. Thus, a union having a controversy with a single building contractor could lawfully strike or picket all other employers engaged at the site, even though it has no quarrel with any of them.

Franchised automobile dealers are constantly engaged in extending or remodeling their physical facilities. During the past four years there has been a constantly increasing amount of such work. In fact, at any given time, a substantial percentage of the franchised dealers have underway either remodeling or expansion programs. Consequently, dealers have a real interest in this proposed legislation.

If H.R. 100 is enacted, the franchised dealer's establishment may well be regarded as the site of the construction project, if any alteration, painting, repair or construction is taking place there. This in turn could mean that a picket line addressed to a minor alteration job at the dealer's establishment might well cripple his entire business. The public does not distinguish among the reasons for picketing. They just stay away, particularly if the picketing is at a retailer's place of business. The retailer then suffers great damage, even though he is not involved in or a party to the basic dispute. Business lost through picketing is not regained. The customer just buys elsewhere.

It is unconscionable to allow these consequences to result to the perfectly innocent dealer. Under well established law, unions already have a right to picket construction jobs and secondary employers, so long as they limit the picketing to times when the situs of the dispute is at the secondary employer's place of business, the picketing is limited to places reasonably close to the location of the situs, the picket sign states clearly that the dispute is with the primary employer, and at the time of picketing the primary employer is engaged in its normal business at the situs. It should also be observed that these rules are liberally applied by the NLRB and the courts to allow many situations of secondary picketing. Certainly these are reasonable rules and the secondary boycott laws ought not be changed to confer upon unions unlimited right to embroil innocent secondary employers in their controversies.

We urge that the committee reject H.R. 100 as wholly un-needed and undesirable legislation.

STATEMENT OF THE SOUTHERN STATES INDUSTRIAL COUNCIL

The Southern States Industrial Council is an organization representing more than 3,000 business and industrial firms, with headquarters in Nashville, Tennessee. Because a number of members are directly involved in construction or construction-related industries, the Council has a substantial interest in H.R. 100,

a bill that would allow unjustifiable secondary boycotts by unions on construction sites as a means of bringing pressure to bear on employers and employees not party to a labor dispute. In addition to this, the membership of the Council is concerned because they believe that H.R. 100 will contribute significantly to the already inflationary cost of construction in this country.

The Council opposes passage of H.R. 100, referred to as the Situs Picketing Bill.

We believe that H.R. 100 is drastic legislation, which would not only extend unjustifiable and unnecessary picketing powers to the building trades unions, but also would represent a radical departure from the philosophy of established national labor policy. A union dispute with an employer should not be permitted to injure non-involved employers and employees. This fact was pointed out very clearly in the hearings on April 22, 1969, when Secretary of Labor George P. Shultz, in answer to a question, stated that Common Situs Picketing "would give an extra measure of power for the construction unions."

During the same hearings Congressman Ashbrook (R., Ohio) carried the Secretary's reply one step further, when he stated that H.R. 100 would discriminate against non-union employees and employers in construction to the point that they would be eliminated from actual participation in the construction industry.

It must be stressed that one of the express purposes of the National Labor Relations Act is to promote industrial stability by eliminating the causes of industrial strife. By their very nature, however, secondary boycotts detract from this purpose. They undermine existing employment relationships and are clearly designed to jeopardize if not eliminate the employee's free choice in representation disputes.

We believe that there is no need for this special interest legislation since the trade unions operate at no disadvantage under the present law. In the Denver Building Case (*NLRB v. Denver Building and Construction Trade Council*, 341 U.S. 675), the U.S. Supreme Court ruled that contractors and subcontractors working on a construction project are independent employers, and that trade unions having a dispute with one, must conduct their picketing so as to avoid enmeshing the innocent others. This ruling did not put the construction unions in a lesser position than other unions with respect to picketing power, as implied by the unions, because the National Labor Relations Board on the Moore Dry Dock case (*Sailors Union of the Pacific*, 92 NLRB 547) established exact safeguards which permit lawful primary picketing at any common work situs and at the same time protect innocent third parties from being affected by such picketing.

These safeguards which apply to all unions are:

1. The picket signs must clearly indicate the employer with whom the dispute exists;
2. picketing at the job site may be carried on only when the primary employer or his employees are engaged in their normal business at the situs;
3. the picketing must be limited to times when the situs or physical site of the dispute is located on the secondary employer's premises; and,
4. the picketing must be limited to places reasonably close to the situs.

We believe that legislation such as H.R. 100 will permit further abuses by the unions. An example of this can be found in the Philadelphia Door case, where the Building Trades Council engaged in what is known as "back-to-belly" picketing at a site on which a motor lodge was being constructed. The striking union protested the use of pre-fabricated doors on the project, stating that the use of these doors encroached upon one of their legal work areas. Pressures were exerted in order to force the secondary employer to quit work or to cease doing business with the primary employer, thereby forcing the primary employer to surrender to the union's demands. The Common Situs Picketing Bill would enlarge the union's power past the Supreme Court decision of the Philadelphia Door Case, by allowing the product boycott strike to encompass the whole construction site, thereby, causing a work stoppage on the entire site.

A further implication of the power that unions would derive under H.R. 100 can be pointed out in the following hypothetical example:

Say that firm XYZ, while expanding its manufacturing facilities, was struck by one of the building trades unions working on the construction site; it is our belief that under H.R. 100, the unions would not only be allowed to strike the

building's contractor, but they could also establish a picket line around the manufacturing site and effectively stop all production taking place within the plant.

The membership of the Southern States Industrial Council, therefore, believes that labor disputes should not be escalated by allowing building trades unions to engage in construction site secondary boycotts. Such strife-producing conduct is against the public interest and should be isolated, as the law now intends, to the primary parties in the dispute. If there are to be any changes in the law, it should be to strengthen Section 8(b) (4), not to weaken it as H.R. 100 would do.

AMERICAN FARM BUREAU FEDERATION,
April 29, 1969.

HON. FRANK THOMPSON,
Chairman, Special Subcommittee on Labor, House Committee on Education and Labor, Washington, D.C.

[Re: H.R. 100]

DEAR MR. THOMPSON: This is to set forth the views of Farm Bureau relative to the common situs picketing bill, H.R. 100.

It will be appreciated if you will include this letter in the hearing record relating to this proposal.

The objective of national policy relating to labor management relations should be to maintain an equal balance of economic power of unions and management consistent with the public interest and the freedoms of individuals, including workers.

We submit that the evidence is clear that the balance is currently overweighted on the side of unions, enabling them to obtain wage increases substantially in excess of average gains in productivity.

This is particularly true in the construction industry, as the following data will indicate:

AVERAGE GROSS EARNINGS PER HOUR BY MAJOR INDUSTRY¹

	1958	1968	Increase	
			Amount	Percent
Construction.....	\$2.82	\$4.38	\$1.56	55.3
Manufacturing.....	2.11	3.01	.90	42.7
Mining.....	2.47	3.34	.87	35.2
Wholesale and retail.....	1.60	2.40	.80	50.0
Finance, insurance, and real estate.....	1.89	2.76	.87	46.0
All private nonfarm economy.....	1.95	2.85	.90	46.2
Index of output per man-hour in nonfarm private economy, 1957-59=100 ²	99.7	133.4		33.8

¹ Table C-1, Employment and Earnings, USDL, April 1969.

² Table B-34, Economic Report of the President January 1969.

Thus, although wage rates have exceeded the national gain in productivity for all major segments of the economy, wage rates in the construction industry have increased more in relation to national productivity than in any other industry.

Obviously, if wage rates increase faster than the gain in productivity, costs and prices must increase.

The rapid upward trend in construction wages, exceeding the increase in any other industry, has substantially increased costs to taxpayers for public construction, and costs to consumers for housing.

Under these circumstances, we submit it would be contrary to the public interest (certainly including wage earners as the major segment of the public) to enact legislation that would substantially enhance the economic power of labor unions in the construction industry.

Sincerely yours,

JOHN C. LYNN,
Legislative Director.

THE ELKO CHAMBER OF COMMERCE,
Elko, Nev., April 18, 1969.

Hon. WALTER S. BARING,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BARING: We have sent the following telegram to Secretary of Labor George Shultz and to President Nixon:

"Board of Directors unanimously voted opposition to any change in law on secondary boycott ban. Changes proposed could shut down operations of innocent parties not involved in labor disputes. We respectfully urge your opposition to proposed changes."

We are sure that you are aware of the dangers of this proposed legislation. An entire construction project could be shut down if there were a labor dispute with only one subcontractor.

A manufacturing plant or any other type business having an expansion or remodeling project under way, could be shut down as a result of a picket line, even though not involved in a labor dispute—even though only one subcontractor became involved in such a dispute.

Unions could block the use of prefabricated building products, increase costs and further inflation.

We sincerely request that you use all possible influence in Congress and also with the Department of Labor and White House to prevent the enactment of this legislation.

Respectfully,

ERVIN H. SCHULZ,
Manager.

METROPOLITAN DETROIT PLUMBING CONTRACTORS ASSOCIATION,
 MECHANICAL CONTRACTORS' ASSOCIATION OF DETROIT,
Detroit, Mich., March 24, 1969.

Representative FRANK THOMPSON,
Chairman, Special Subcommittee on Labor,
Rayburn Building, Washington, D.C.

DEAR REPRESENTATIVE THOMPSON: I would like to bring to your attention that the Metropolitan Detroit Plumbing Contractors Association, representing approximately 200 contractors, and the Mechanical Contractors Association of Detroit are diametrically opposed to all *COMMON SITUS* legislation such as H.R. 100.

As you probably know, *Common Situs* legislation would legalize secondary boycotts on construction jobs. An example of this would be where a union forces one employer to stop doing business with another employer. Another example would be where the union strikes an employer because he is using some new material or prefabrication technique. Both of these sorts of union activities are presently illegal, but *Common Situs* legislation would give the unions one more stranglehold on the construction industry and directly penalize the home buyer by driving construction costs higher.

As I understand, there are presently eight (8) different bills in the House of Representatives proposing *Common Situs*. I would appreciate your committee record indicating our opposition to *Common Situs*.

Sincerely,

METROPOLITAN DETROIT PLUMBING
 CONTRACTORS ASSN.,
 MECHANICAL CONTRACTORS ASSN.
 OF DETROIT,
 JOHN P. DAVIS,
Executive Secretary.

OREGON STATE ASSOCIATION—PLUMBING,
HEATING, COOLING CONTRACTORS, INC.,
Eugene, Oreg., March 25, 1969.

Representative FRANK THOMPSON,
Chairman, Special Subcommittee on Labor,
Rayburn Building, Washington, D.C.

DEAR REPRESENTATIVE THOMPSON: Our association would like to go on record as being opposed to HR 100, the Common Situs Picketing bill. We feel that this bill is an infringement on management rights which are already severely limited under current labor law. We feel that this legislation would lead to further labor strife. There are already too many strikes in our industry, both over contracts and jurisdictional disputes.

We feel that this legislation would be the cause of many more strikes. Also, this bill will not exempt secondary boycotts against missile bases and other defense projects, except that they must give 10 days notice in this case, but that is not much protection. This bill, our members feel, could cripple our entire defense effort.

We would appreciate having this letter added to the committee hearing record.
Sincerely,

DONN CHASE,
Chairman, Legislative Committee.

STATEMENT BY THE NATIONAL ASSOCIATION OF MANUFACTURERS

The National Association of Manufacturers is pleased to present its views on H.R. 100, the so-called "situs picketing" bill. This proposal would add to the already excessive power of construction unions by expanding the impact area of labor disputes, contrary to the national labor policy as expressed in existing legislation. It is of real concern to and would affect a large number of the Association's membership, which consists of manufacturing concerns of all sizes engaged in virtually all segments of industry throughout the country.

H.R. 100 seeks to immunize secondary boycott and picketing activities in the construction industry, notwithstanding that the prevalence of such abuses in that industry primarily influenced Congress to outlaw secondary boycotts in the Taft-Hartley Act of 1947.

This legislative intent has been in large measure defeated by decisions of the National Labor Relations Board (NLRB) and of certain courts. (Some of these decisions are discussed in the Appendix to this Statement.) Instead of seeking to reestablish the original intent of Congress, H.R. 100 would erode that intent still further.

I. DISPROPORTIONATE BARGAINING POWER OF CONSTRUCTION UNIONS

The building trades unions already possess excessive bargaining power which is pointed out by their disproportionate gains through bargaining and strikes during the past several years. In a special report issued in May, 1968, the President's Cabinet Committee on Wage and Price Stability stated:

"Wage-price developments in the important construction sector spread inflation throughout the economy by raising costs elsewhere and by intensifying wage demands in other industries."

The following two analyses¹ constitute statistical proof that the disparity of bargaining power among unions significantly favors those in the construction industry, and they dramatically demonstrate that the serious concern of the President's Cabinet Committee was well-founded.

¹ Figures compiled by the Bureau of National Affairs.

MEDIAN WAGE INCREASES IN CONTRACT SETTLEMENTS IN CENTS PER HOUR IN 1ST HALF OF 1968 AND OTHER
RECENT 1ST-HALF PERIODS

	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959
All industries.....	16.4	13.7	10.2	8.3	7.6	8.0	7.7	8.3	9.2	9.3
All industries excluding construction.....	15.2	13.0	9.9	8.1	7.3					
Manufacturing.....	14.9	12.4	9.6	7.5	6.9	7.3	6.8	7.7	8.2	8.2
Construction.....	38.3	33.0	19.8	15.5	15.3	14.8	12.2	12.2	14.7	14.6

MEDIAN WAGE INCREASES IN CONTRACT SETTLEMENTS, IN CENTS PER HOUR, FOR EACH
QUARTER OF 1968 AND FOR THE FULL YEAR 1968

	1st quarter	2d quarter	3d quarter	4th quarter	Year 1968
All industries.....	15.3	17.8	20.0	19.7	18.5
All industries, excluding construction.....	15.3	15.1	17.8	19.5	16.7
Manufacturing.....	14.9	15.0	16.8	17.7	15.7
Construction.....	28.0	39.0	60.1	45.0	49.6

Although wage increases secured by construction workers have traditionally exceeded the wage gains negotiated by employees in other segments of the economy, the 1968 wage increases in the construction industry reached alarming and disproportionate limits. As indicated by the second analysis, the median wage increase in 1968 for construction workers was approximately three times the comparable increase for employees in all other industries. Such disproportionate gains can only be achieved by a gross imbalance in bargaining power which has favored the powerful confederation of construction craft unions.

The tremendous leverage inherent in this imbalance is exemplified by the recent success of the Michigan construction workers, particularly those in the Detroit area, in effecting an 85-day strike in the spring of 1968 which idled more than 55,000 construction workers around the state and tied up hundreds of millions of dollars in construction, including most homebuilding in the Detroit area. Their excessive, collective economic power enabled these unions to extract settlements which, by mid-1969, will provide rates (including fringe benefits) for Detroit area construction workers ranging from \$5.65 an hour for laborers (18.4 percent increase over prior agreement) to \$8.50 an hour for electricians (33.6 percent increase).

To cite another of many examples, Dayton, Ohio, bricklayers recently won a 72 percent pay raise over a four year period—capping a 73-day work stoppage and increasing their hourly pay to \$9.75.

What these alarming contract settlements portend for the nation's economy is best illustrated by the statement of George Meany, President of the AFL-CIO, to newspaper reporters following conference with then President Johnson in May, 1968:

"It was only natural that a worker in one area will be watching to see how a worker in another area is doing in collective bargaining. A strong union couldn't be expected to limit its demands when other unions are getting more than voluntary restraint would get it."

II. ADDITIONAL WEAPON FOR CONSTRUCTION UNIONS

H.R. 100 would grant construction unions and others, already possessing the power to halt entire construction projects, the additional economic weapon of the secondary boycott. In fact, the extension of secondary boycott privileges to construction unions would provide a net increase in (not merely an equalization of) economic strength since they already enjoy bargaining advantages which other unions lack. Included are (a) the powers to make union security agreements before men are on the job and to require union membership after the seventh day of employment, and (b) exemption from the ban on "hot cargo" agreements. As a result of the Supreme Court decision in *National Woodwork Manufacturers Association v. National Labor Relations Board*, 386 U.S. 612 (1967), such agreements can now be used to effectively exclude cost-saving techniques and materials from construction projects.

Proponents claim that this bill is designed to put construction workers and their unions on an equal footing with all other employees with respect to the

right to strike. However, construction workers have the same right to strike as all other employees. Their right to engage in primary strikes over their wages, hours, and other terms and conditions of employment was made explicit in 1959 when Congress added to the secondary boycott provisions of Section 8(b) (4) (B) of the National Labor Relations Act the following proviso:

"Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

To enforce the statutory proscription that building trades unions as well as any other unions may apply primary pressure only, the NLRB has set certain reasonable conditions for strikes or picketing to prevent secondary effects. These conditions take into account the "unique situation" of several employers working on the same site and were developed in the *Moore Dry Dock Company* case (*Sailors Union of the Pacific*, 92 NLRB 547) which is discussed in the Appendix.

However, subsequent decisions of the NLRB and the courts have expanded upon those conditions, thereby granting construction unions the power lawfully to engage in such "common situs" picketing at construction projects that would otherwise appear to violate the secondary boycott prohibitions of the Act. This is demonstrated by the analysis of cases in the Appendix.

It is partly because of this tendency to construe the secondary boycott prohibitions so as to permit such activities that we object to the broadly written provisions of H.R. 100 and their susceptibility to similar distortion.

III. THREAT TO COLLECTIVE BARGAINING PROCESS

It is an anomaly that organized labor presses for this special interest legislation at a time of serious strikes and inflationary wage settlements, caused in large part by the existing imbalance in bargaining power favoring labor over management. The public concern which has been engendered by labor crises may affect the future of collective bargaining. However, by supporting H.R. 100 and seeking further gains in already excessive powers, organized labor increases the probability of a climate conducive to anti-strike legislation (e.g., compulsory arbitration) which both it and industry generally oppose.

In considering H.R. 100, we urge Congress to reflect on this rising tide of public concern and to recognize that a further breach in the barriers against secondary boycotts will add significantly to the imbalance at the bargaining table. Contrary to the position of the proponents of H.R. 100, the building trades unions have more bargaining power than industrial unions and any further advantages accorded them by Congress can only increase industrial strife and inflationary wage settlements.

IV. JOINT VENTURERS VERSUS NEUTRAL EMPLOYERS

When the construction unions successfully pleaded their case for the special advantages under the existing legislation as outlined above, they emphasized the "unique situation" of their industry with respect to the employment relationship. However, supporters of this bill now deny that there is a "unique situation" on this crucial issue. Their current posture is that the contractors and subcontractors on a construction project are essentially a single employer or joint venturers and that there are no neutral parties on the site.

But their position is unsupportable. Construction contractors deal at arms length with each other, independently determine employment policies, and in fact, are frequently competitors. They are often distinct legal entities and are generally treated as neutrals by federal, state and municipal governments in awarding construction contracts.

ANALYSIS OF H.R. 100

The bill is written so that it could be construed to legalize almost any action a union might wish to take, so long as such action takes place at a construction site. Because of this site limitation, it is generally described as limited to the construction industry. However, no language in the bill specifically prevents the effects of secondary boycotts, product boycotts, and other action from reaching many employers removed from the work site.

The extreme breadth which might be given the bill by interpretation becomes apparent only upon analysis of each of the clauses in the single long and complicated proviso proposed to be added to the present law.

The types of union conduct which the bill would legalize at construction sites include all types of activities embraced within the broad terms "any strike or refusal to perform services" and "any inducement of any individual employed by any person to strike or refuse to perform services." These terms seem to cover practically any activity a union might wish to engage in. Included are total strikes and picketing to prevent work or delivery of products, and partial strikes, slowdowns and similar harassing tactics.

The latter provision covering "inducement of any individual . . ." was derived from an AFL-CIO draft.² It was added presumably for the dual purposes of expressly authorizing (a) secondary and product boycotts and (b) inducement of both supervisory and non-supervisory employees of any employer whether or not a contractor on the job and whether or not engaged in the construction industry. Its effect is to be appraised in light of the agreement reached early in 1965 between the Building and Construction Trades Department and the Industrial Union Department of the AFL-CIO, which provides in part:

"When any affiliate of the undersigned Departments, or a local or other subordinate body thereof, is engaged in an authorized strike including picketing, it shall be the duty of all other affiliates to render such support as is legally permissible and practically feasible, and to refrain from any action which would adversely affect the position of the organization as engaged.

"No affiliate of the undersigned Departments will authorize its members under any circumstances to perform struck work. Each affiliate will to the extent legally permissible, cooperate in persuading its members not to cross a picket line established in support of such a strike."

Under that agreement and the proposed bill, any manufacturer or employer constructing an addition to an existing plant, having alterations made, or having painting or repair work done could have his entire plant shut down because of a dispute over such work. A construction union could lawfully picket and induce production workers to observe its picket line, thereby bringing production to a halt.

The places where such a conduct would be legalized include all locations which might be construed to be "at the site of the construction, alteration, painting, or repair of a building, a structure, or other work." The "site" might well be interpreted to include not only the actual premises but also any adjacent, nearby or related premises which are utilized or are necessary for carrying on the work. In fact, the United States Supreme Court has already sustained an NLRB ruling that a union did not violate the Act by picketing the gate to a struck plant that was on the right-of-way owned by a railroad serving the plant in an effort to prevent the railroad from performing services for the struck employer.³

The terms "construction, alteration, painting, or repair of a building, structure or other work" presumably encompass all activities on any construction project. Included, for example, are not only buildings and similar structures but also roads and highways, bridges, docks, dams, transmission lines, pipe lines, railroad tracks, airports and air fields, excavations, and earth moving and grading projects. Even defense installations and space centers, such as the Nevada Test Site and Cape Kennedy, could be shut down by presently unlawful secondary activity subject only to a ten-day notice requirement.

Under the bill, the strike, refusal, or inducement must be at such site "and directed at any of several employers who are in the construction industry." It is significant that an earlier bill on this subject introduced by Rep. Frank Thompson, Jr., contained the more limiting language "directed at any of several employers who are engaged primarily in the construction industry." (Emphasis added.)⁴ Omission of these words appears to be a conscious effort to afford even greater latitude to the NLRB and courts to permit the increased use of secondary boycotts. According to this language (and, indeed, that of H.R. 6363), any employer whose plant is undergoing construction work could be considered "in the construction industry" and subject to secondary pressures.

The bill does not contain any limiting language which would assure that an employer whose principal activity is not construction would not be considered "in the construction industry." Thus possible targets for secondary boycotts include the owner, lessor, lessee or user of the premises at which the work is being performed, and any employer performing work at the premises related to the normal operation of the business located there.

² BNA Daily Labor Report, February 26, 1965, pp. AA-1 to AA-5.

³ United Steelworkers of America v. NLRB, 376 U.S. 492 (1964).

⁴ See H.R. 6363, First Session, 89th Congress, 1965.

The term "directed at" could be interpreted to mean that a union is required only to call a strike ostensibly against one of the employers on the project. It is significant that no restriction whatever is put upon the effects of the strike. So far as this clause is concerned, the impact could reach any employer at any location. Thus it might include anyone who furnishes tools, equipment, materials, supplies, services, or other items used in any branch of the construction industry.

Boycotts permissible under H.R. 100 might not be limited in their effects to employers working at the site. There appears to be no language which would prevent such boycotts from stopping operations of any employer at whose premises the construction, alteration, repair, or painting is being performed. Thus a manufacturer or other employer who is having (a) an addition built to his plant, (b) alterations made, or (c) his plant painted would have his entire plant and operations shut down while all employees refuse to cross a construction picket line. The bill would grant blanket immunity to picket "reserved gates" at construction sites, conduct which the NLRB has determined to be unlawful. (See discussion of *Markwell & Hartz* at page iii in the Appendix).

The employer or employers at whom the strike or refusal is "directed" may be any of several who are "jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site." Presumably this is intended to cover all situations where work is performed or will be performed by more than one employer at the site. It is not clear whether an owner who contracts for any such work to be done by a single party would be deemed a "contractor" and whether the bill would apply in this situation.

The bill contains essentially no limiting language to control the permissible scope for secondary activity. The language "and there is a labor dispute . . . relating to the wages, hours, or other working conditions" covers practically any controversy except those specifically unlawful under the Act or in violation of labor contract provisions. The broad definition of "labor dispute" in Section 2(9) of the Act, and the broad construction of "wages, hours, or other working conditions" by the NLRB and some courts to include nearly any lawful demand a union may make, practically precludes any limitation on the use of strikes or picketing.

Because of the absence of language limiting the scope of secondary activity, the product boycott can be expanded. It would appear that the provisions of H.R. 100, especially the provision permitting "any inducement of any individual employed by any person to strike or refuse to perform services," would allow unions the right to boycott delivery of any product to the site and the use of any product delivered over their objection. Thus, H.R. 100 could have a substantial effect on manufacturing.

CONCLUSION

We respectfully urge the rejection of the proposal embodied in H.R. 100, which would weaken and make ineffective the secondary boycott protections afforded by the National Labor Relations Act.

The proposal is especially inappropriate at a time of continued strong inflationary pressures on the nation's economy, excessive wage settlements won by construction unions, and residential construction orders which are estimated at over 26 million units during the next decade. In this context, it would be unwise to give the building trades unions additional leverage for their negotiations by granting them the power to effect secondary boycotts.

Rather than claims of inequality of power between building trades unions and industrial unions, we respectfully suggest that Congress should consider at this time how to attack the root causes for the growing number and intensity of strikes during the past several years. It should be noted that the highest ratio of time lost from work due to strikes since 1959 and the largest number of work stoppages since 1953 were recorded in 1968.

We further suggest that Congress should concern itself with the power of organized labor, especially of the construction unions to obtain wage settlements of such magnitude as to push the economy into a dangerous wage-price inflationary spiral. According to the latest statistics issued by the Department of Labor, the consumer price index for March, 1969, registered an increase of 9.6 percent on an annual basis, the highest in eighteen years.

We respectfully submit that enactment of H.R. 100 will aggravate the serious problems caused by the evident imbalance in bargaining power favoring the construction unions, and that its enactment would not be in the public interest.

APPENDIX

According to the supporters of H.R. 100, it is designed to reverse the *Denver Building Trades* case, 341 U. S. 675 (1951). The U. S. Supreme Court ruled unlawful the union's conduct in a typical secondary boycott and picketing situation in the construction industry.

Under that case and other decisions, notably the *Moore Dry Dock* case, 92 NLRB 547 (1950), a union may not engage in a secondary boycott at a construction site where employees of several employers are working. However, it may engage in strikes or picketing at such site against a primary employer with whom it has a lawful dispute provided it complies with certain reasonable conditions to prevent secondary effects.

These conditions that apply to all unions and that were established in the *Moore Dry Dock* case are: (1) the picketing disclose clearly that the dispute is with the primary employer only; (2) the picketing is strictly limited to times when the situs of the dispute is on the neutral employer's premises; (3) the primary employer is engaged in its normal business at the common situs when the picketing takes place; (4) the picketing is confined to areas reasonably close to the situs of the dispute.

However, the NLRB has held that the *Moore Dry Dock* safeguards are not to be applied on a *per se* basis but are to be regarded as aids in determining the underlying question of statutory violations. This effort to be "flexible" has led the Board to haphazard applications of the *Moore Dry Dock* criteria, the effect of which has been to cast doubt on the validity of these criteria and leave the law in a state of uncertainty.

Thus, "flexibility" let a majority of the Board to rule in *Plauche Electric, Inc.* 135 NLRB 250 (1962) that when a union pickets at the establishment of a neutral employer where employees of the struck employer are working, the fact that the struck employer has a place of business in the area at which the union can picket is merely one of the circumstances to be considered in determining the legality of the picketing. In that particular case, the Board by a 3-2 vote held that the union had not violated Section 8(b) (4). The dissent pointed out that the union could have effectively picketed at the struck employer's place of business (Plauche) in order to put pressure on Plauche through its own employees. Instead, the union chose to picket where its inducements would reach not only Plauche's employees but also the employees of others working on the site. Although in these circumstances the only reasonable inference is that the inducements ostensibly directed at Plauche's employees were, in fact, directed at such other employees in violation of Section 8(b) (4), a majority of the Board found no violation.

It should be noted that in the *Plauche* case the Board did not dispute the sound premise underlying the standard of *Moore Dry Dock* and *Washington Coca-Cola*, 107 NLRB 299 (1953), that picketing at the common situs rather than the available separate situs of the primary employer discloses an intent to broaden the scope of the labor dispute and to involve neutral employers in the controversy without any countervailing justification. However, H.R. 100 would render this premise inoperative.

Another example of stretching the secondary boycott provisions which H.R. 100 seeks to further liberalize is the NLRB's decision in *New Power Wire and Electric Corp.*, 144 NLRB 1089 (1963). In that case, the Board found that a union had not violated Section 8(b) (4) by picketing a common situs, even though employees of the struck employer were absent from some of the picketed premises for substantial periods of time. Many commentators felt that the picketing in *New Power* was clearly directed at and designed to enmesh neutral employers.

Accordingly, they believed as we do that the Board should have found a violation. But despite this tendency to license more and more union picketing that would appear to be violative of the 8(b) (4) prohibitions, the proponents of H.R. 100 want to accelerate this trend and permit even more secondary boycott activity.

In *Local 761, IUE v. NLRB* (General Electric), 366 U.S. 667 (1961), the U.S. Supreme Court gave limited recognition to the right of employees of neutral contractors to pass through a reserved gate unobstructed by picketing directed at a struck employer or employers occupying the same premises. The court, however, would permit unions picketing the struck employer to picket the reserved gate as well if the neutral contractors' employees using the reserved gate were doing work "connected to the normal operations of the struck employer."

The building trade unions in *Markwell & Hartz*, 155 NLRB No. 42 (1965), sought blanket immunity for reserved gate picketing at construction sites, under the *General Electric* exception. By a bare majority, the Board ruled that *Moore Dry Dock* would still apply to common situs picketing of a struck construction contractor, and that the *General Electric* decision was not intended to interfere with traditional solutions to the distinctly different problems of the construction industry.

H.R. 100 would reverse the Board ruling and provide the blanket immunity for reserved gate picketing sought by the construction unions.

STATEMENT OF GEORGE S. BULLEN, LEGISLATIVE DIRECTOR, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, D.C.

This statement is made in behalf of the members of the National Federation of Independent Business, which is the largest small business-professional organization in the Country, with a current membership of more than 267,000. More than one of every twenty small businesses is a member. The membership is a representative cross section of the Nation's entire small business community at the retail, wholesale, manufacturing, servicing and professional occupational levels.

A goodly number of our members are involved in the construction industry and would be directly affected by the legislation presently before this Subcommittee.

We in the Federation feel very strongly that passage of this legislation would in effect legalize secondary boycotts at construction sites, and therefore, oppose its enactment.

Our opposition to these measures is backed by a long series of membership votes, going back as far as 1946. The Federation's members have voted consistently against secondary boycotts, or in favor of legislation which would strengthen the ban on them. During the past decade, the Federation has polled its nationwide membership three times on this issue, twice receiving very strong returns against allowing secondary boycotts and the third and most recent time, receiving an overwhelming vote in favor of a proposition presented to our members which would ask Congress to enact laws which would prohibit a union from boycotting or picketing a construction site where builders used prefabricated materials or other products opposed by the union.

In 1960 we polled our members on H.R. 9070 in Mandate No. 257. Our members voted against the measure by a very large majority—85%, with only 12% supporting it and 3% expressing no opinion. The following shows our poll of the bill:

2. *H.R. 9070-S. 2643. Secondary Boycotts.*—Change the national labor law to permit building industry subcontractor unions to use secondary boycotts thus permitting them to tie up entire construction jobs (Rep. Thompson, N.J.-Sen. Kennedy, Mass.).

Following are brief arguments "FOR" and "AGAINST" which our members were asked to read before voting:

2. *Argument for H.R. 9070-S. 2643.*—Fairness for construction industry labor unions and their members . . . that's the aim of this bill. The Supreme Court recently ruled that when one subcontractor gets into a dispute and his union employees throw up picket lines, that the union member employees of other subcontractors working on the job cannot be made to honor the picketing, must go to work. For instance, in one case in point, a subcontractor brought non-union workers onto a job, and there wasn't a blessed thing his unionized employees could do about it.

2. *Argument against H.R. 9070-S. 2643.*—This would really give unions the upper hand with builders. Let the slightest thing go wrong between one subcontractor and his union, and it could go on strike, tying up the whole job. This would pressure the prime contractor. To protect his job, he could easily be forced to pressure the subcontractor to cave in to the union. More than this, let construction worker unions win this bill, then watch all unions move in for the kill on the Landrum-Griffin bans on secondary boycotts in all American industry.

Results of the poll were:

For -----	12%
Against -----	85%
No vote -----	3%

Again in 1965, we polled our members on H.R. 6411, and once more we received a very strong vote against the measure. Our presentation of the issue follows:

3. *H.R. 6411-S. 1655.*—These bills would amend national labor law, to permit building industry subcontractor unions to use "secondary boycotts" on construction projects (Cong. Sickles, Md.-Sen. McNamara, Mich.).

Arguments "FOR" and "AGAINST":

3. *Argument for H.R. 6411-S. 1655.*—Fairness for construction industry labor unions and their members . . . that's the aim of this bill. The Supreme Court recently ruled that when one subcontractor gets into a dispute and his union member employees throw up picket lines, that the union member employees of other subcontractors working on the job cannot be made to honor the picketing, must go to work. For instance, in one case in point, a subcontractor brought non-union workers on to a job, and there wasn't a blessed thing his unionized employees could do about it.

3. *Argument against H.R. 6411-S. 1655.*—This would really give unions the upper hand with builders. Let the slightest thing go wrong between one subcontractor and his union, and it could go on strike, tying up the whole job. This would pressure the prime contractor. To protect his job, he could easily be forced to pressure the subcontractor to cave in to the union. More than this, let construction worker unions win this bill, then watch all unions move in for the kill on the Landrum-Griffin bans on secondary boycotts in all American industry.

Results of the poll were:

For	12%
Against	85%
No vote	3%

Finally, in 1968 we polled our members as follows:

4. *Are you For or Against* Congress enacting a law that would prohibit a union from boycotting or picketing a construction site where builders use prefabricated materials, or other products opposed by the union?

Arguments "For" and "Against":

4. *Argument for the proposal.*—Proponents of this proposal point out that a Supreme Court decision last April, in effect, legalized one form of product boycott. The case involved precut doors in a housing project. The court said unions can enforce a work preservation clause. This proposal calls for legislation to outlaw such union action. In the future builders will need to use prefabricated materials more and more to increase productivity in the face of labor shortages and rising costs.

4. *Argument against the proposal.*—Opponents of this idea see it as another step to kill off the staying power of unions. The Supreme Court rightly concluded that it would be unfair to union employees to have jobs which are traditionally done on the project site performed off the site. In their decision the Justices prohibited the off-site work in order to keep union members from having their jobs destroyed. It seems only fair to allow a man every means available to protect his job.

Results of the poll were:

For	92%
Against	6%
No vote	2%

Following that poll, the National Federation of Independent Business issued a press release wherein we commented on the nationwide vote but of particular interest is the state by state breakdown of the poll which showed that voting went as high as 95% in some states against allowing secondary boycotts. (Copy attached).

It would seem that the Nation's independent business community does not feel that employers not party to a dispute should be sacrificed simply to promote and east the way for union organization, monopoly and control in the construction industry.

In any given construction site, the general contractor will often subcontract to as many as a dozen or more firms, each performing a different specialty, yet working at the same job site.

Should a dispute arise in any one of these small subcontracting firms, it seems absolutely unconscionable that all the rest of the firms involved in the project might have to cease their labors until that single dispute is settled.

An example has been used that two paper hangers working on a multi-unit apartment house in various stages of completion could halt the entire work of several hundred men over a dispute involving the two men and their subcontractor employer over such trivial matters as the length of time that should be allowed for a coffee break.

At this point, I would like to quote a press release on the subject matter issued by the Federation last year. This release says in part:

"Senator Strom Thurmond, South Carolina, has before the Congress a bill supported by 91 percent of the nation's independent business proprietors voting through the National Federation of Independent Business which would, among other things, curb union control over building practices.

"Now Senator Philip Hart, Michigan, has presented an amendment to the Housing and Urban Development Act which would also end much of the restrictive practices enforced by the building trades unions to benefit the poor.

"Senator Hart says: 'The building industry today—with the brick by brick method—is struggling to provide 1.5 million new units per year. Yet as a minimal requirement we must build 25 million units in the next ten years. Six million of them should be low cost units.

"He further states that it is necessary to get rid of political restraints that prevent the development of new technology in the building of dwelling units which he claims can result in the present average costs of \$14 to \$16 per square foot being dropped down to \$7 to \$9 per square foot.

"His amendment would insist that the government require any housing built with any type of Federal assistance be forced to incorporate the new cost-cutting technologies.

"While Senator Hart's approach is somewhat different from that of Senator Thurmond, both seek a solution to high building costs by permitting the unrestrained use of modern developments to replace archaic methods largely sustained by the unions in the building industry.

"However, a further block was thrown across the road leading to this objective supported by the two Senators in a decision this year by the United States Supreme Court. This verdict arose out of a case where a contractor is seeking to install cost saving pre-assembled doors and windows in a project was subjected to a strike as the unions insisted that such work be done on the job by the slower, costly methods. The Supreme Court took the side of the unions in a decision which stated in effect that the unions have a right to prevent work being taken away from its members on the job.

"The nation's independent businessmen, again voting through the Federation, voted by a majority of 92 percent for the Congress to introduce and enact legislation over-throwing this decision which so far has not been done.

"Whether or not the reforms in home building sought by Senators Hart and Thurmond will be accomplished appears a moot question. In introducing his amendment Senator Hart asked the rhetorical question" "What are we waiting for?"

"First among these considerations will be the question of whether the pressures of the poor at a national level can overcome the resistance of the craft unions. Then will probably ensue local struggles as unions mount resistance to any changes in local building codes to permit the use of modern housing technology.

"These city by city struggles could presumably delay the start of construction. While perhaps by further stretching the legal doctrine that resulted in the passage of a national 'open housing law,' legislation could be enacted superseding all local building codes, such attempted action would undoubtedly cause a long, drawn out and bitter fight on the Constitutional question of how much further the Federal government can encroach on local affairs. In addition, in view of the recent Supreme Court decision, such legislation might be declared invalid, leaving housing in a worsening turmoil.

"Probably the most practical approach would be acceptance of the principle incorporated in the Hart amendment which would prohibit Federal participation in any housing where modern methods conflict with local laws. Under this plan, big city mayors, who are voicing the strongest demands to help in housing their poor would then be compelled to pressure their local governing bodies for the necessary revisions to their local building codes.

"But it is also probable that these big city mayors, conscious of their relations with unions, would also prefer to see passage of the Thurmond bill so that instead of a confrontation between City Hall and the Unions, the engendered heat could be shunted in the direction of Capitol Hill.

"As a result of the heat that will be generated there is a possibility of an additional 'fall out' over the already splitting monolith of organized labor, recalling the turmoil of three decades ago on the principle of vertical unionism vs. horizontal unionism.

"The auto workers union, a leading proponent of vertical unionism, played a large role in bringing to the altar the morganatic marriage of the AF of L and the CIO, has been a supporter of the aspirations of the poor. In addition, the auto workers have served notice of divorcement from the AFL-CIO.

"On the other hand, the AFL both by tradition and practice has been the citadel of the craft unions that would be affected by changes in building practices, and may be forced by internal political factors to resist any changes to achieve lower cost housing for the poor, thus creating a wider cleavage than now exists.

"Thus, as the contemporary saying goes, 'the beat goes on'. At issue is whether the poor can afford adequate housing costing \$7 per square foot to build, or \$4 per foot."

Therefore, for the above mentioned reasons, and in line with the majority opinion of our members, the National Federation of Independent Business opposes enactment of legislation allowing common-site picketing.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC.,
Washington, D.C., January 15, 1969.

THE BRIEF FACTS

The Supreme Court, in a landmark decision, has upheld the right of a union to strike against a builder's use of prefabricated materials under a work protection clause in its contract, ruling that the union may oppose elimination of work traditionally done on the construction site. The construction industry wants legislation to reverse this position and prohibit strikes against use of prefabricated materials. A poll conducted by the National Federation of Independent Business finds 92 percent of the independent businessmen favor such legislation, 6 percent oppose it and 2 percent are undecided.

A builder should have the legal right to use prefabricated components, pre-sized materials or other products of his choice without fear of union picketing.

This is the sentiment of an overwhelming majority of independent businessmen polled on the subject of union picketing against the use of prefabricated products. Because of a 1967 Supreme Court ruling, legislation apparently is needed to guarantee the builder this right.

Ninety-two percent of the independent proprietors say they favor Congressional legislation to prohibit a union from boycotting or picketing a construction site where a builder is using prefabricated materials or other products opposed by the union.

The National Federation of Independent Business found only six percent opposed to the suggested legislation, and two percent who voiced no opinion.

In (name of state) -----, ---- percent indicated they favor legislation of this nature, ---- percent oppose it, and ---- percent are undecided.

The question of the builder's right to economize with labor-saving products versus the union's right to oppose use of these products in order to preserve work for its members was an issue before the Supreme Court last year. The high court heard a case involving a Philadelphia contractor who was picketed by a carpenters' union when he tried to use pre-cut doors. The Court held that the union had the right to strike under a work preservation clause in its contract.

It said unions can act to prohibit jobs traditionally done on the site from being performed off the site.

Many builders and contractors fear the ruling may have far-reaching repercussions which will hinder construction work from being performed most economically. Some critics say the ruling in effect, will legalize one form of product boycott banned by the Landrum-Griffin Act of 1959.

With increasingly higher wages being paid, and rising mortgage interest rates combining to increase building costs and discourage production of new units, the construction industry sees the use of labor-saving products as the only way to bring costs down.

Technological advances in construction which require less on-site labor apparently will be resisted by the unions, with legal support based on the Supreme Court decision.

While ruling in favor of the Philadelphia carpenters' union, the Supreme Court said the building industry could take its case before Congress and seek corrective legislation.

The landslide poll results indicate that independent businessmen in all types of work agree with the construction industry that legislation is needed.

"The Supreme Court seems to have gone back to Depression days when anything preserving work for unions was upheld," complained one observer.

Although appropriate legislation has not been introduced in Congress yet, Representative Frank Thompson of New Jersey has indicated that if the Supreme Court, in effect, upheld the product boycott, he would favor corrective legislation.

STATE BREAKDOWN FIGURES—PROHIBIT UNIONS FROM BOYCOTTING A CONSTRUCTION SITE WHERE BUILDERS USE PREFABRICATED MATERIALS

State	Percent in favor	Percent against	Percent undecided	State	Percent in favor	Percent against	Percent undecided
Alabama.....	92	5	3	Nebraska.....	93	5	2
Alaska.....	89	7	4	Nevada.....	92	7	1
Arizona.....	95	4	1	New Hampshire.....	91	6	3
Arkansas.....	93	5	2	New Jersey.....	90	7	3
California.....	90	7	3	New Mexico.....	94	5	1
Colorado.....	89	8	3	New York.....	88	8	4
Connecticut.....	95	3	2	North Carolina.....	86	11	3
Delaware.....	98	2	1	North Dakota.....	92	6	4
Florida.....	93	6	2	Ohio.....	92	8	2
Georgia.....	94	4	2	Oklahoma.....	89	8	3
Hawaii.....	87	5	8	Oregon.....	91	7	2
Idaho.....	91	7	2	Pennsylvania.....	92	7	1
Illinois.....	90	6	4	Rhode Island.....	90	6	4
Indiana.....	91	6	3	South Carolina.....	95	3	2
Iowa.....	91	6	3	South Dakota.....	89	9	2
Kansas.....	90	6	4	Tennessee.....	87	11	2
Kentucky.....	87	8	5	Texas.....	94	4	2
Louisiana.....	92	6	2	Utah.....	83	11	6
Maine.....	94	5	1	Vermont.....	78	16	6
Maryland.....	88	7	5	Virginia.....	93	5	2
Massachusetts.....	93	6	1	Washington.....	78	22	2
Michigan.....	92	6	2	Washington, D.C.....	93	7	3
Minnesota.....	90	6	4	West Virginia.....	91	7	2
Mississippi.....	92	5	3	Wisconsin.....	89	4	7
Missouri.....	88	9	3	Wyoming.....			
Montana.....	90	6	4				

STATEMENT OF THE CONFERENCE OF AMERICAN SMALL BUSINESS ORGANIZATIONS

The Conference of American Small Business Organizations is an association of many thousands of small and independent business firms located in all fifty states of the Union. Many of the members of this association are engaged in the construction business either as contractors or subcontractors and many other firms are engaged in furnishing supplies and services to the construction industry. We are, therefore, directly and vitally interested in the proposed changes in the Taft-Hartley Act that would be brought about by H.R. 100.

As small business enterprises the members of the Conference are particularly vulnerable to the overwhelming pressures that the building trades unions are able to bring to bear, and there is not the slightest doubt that our members, as well as small business generally, would be adversely affected as a result of enactment of H.R. 100. We wish therefore to register our opposition to this bill in the strongest possible terms.

H.R. 100 is nothing more than a grasp for power by the building trades unions; power to force compulsory unionism on unwilling employers and their unwilling workers, power to deny job opportunities to workers who don't want to submit to union compulsion, and power to punish economically every employer who will not agree to shove a union down the throats of his unwilling employees and deliver them as captive sheep to the union shearers.

If there is any one group in the United States that does not need and should not have more power, it is the construction trades unions. There is no other group that has so fully demonstrated its eagerness to abuse the power it has

been given or which has so completely proved its inability to use power with restraint and respect for the rights of others. What the building trades unions are now seeking through H.R. 100 is total domination over the building industry so that no building contractor, subcontractor or supplier will be permitted to function in the industry unless he agrees to whatever terms and conditions are dictated by the unions.

Even as it stands now the National Labor Relations Act carves out a whole series of special privileges for the building construction unions that other unions do not have. Under Section 8(f) of the Act construction unions may bypass the election and certification procedures of Section 9 and enter into pre-hire arrangements under which all workers to be employed on a project must be hired through a union hiring hall, and must, if not already union members, become members within seven days from the date they are hired. Under Section 8(e) of the Act construction unions are permitted to enforce restrictive agreements under which union contractors must agree to refrain from doing business with non-union firms either as general contractors or subcontractors. Under the Supreme Court's interpretation of this section in the National Woodworkers case, decided last year, construction unions can strike and picket to enforce hot cargo restrictions against factory-assembled materials even where such materials are union made by members of another local of the same trade union.

This combination package of the hiring hall, pre-hire agreements, seven-day union shop, and enforcement of product boycotts gives these unions enormous leverage to demand and enforce the most grossly unreasonable and uneconomic terms. They have been able to bring about the most highly inflationary wage costs of any industry, and in the process have grossly increased the cost of buying a new home, the cost of building public facilities such as schools and hospitals, and have priced construction of new plants and facilities out of the economic range of the small businessman. The results has been an extreme dislocation in the economic balance between the giant corporations and the medium and small independent business firms.

The wage gains in the construction trades have been astronomically higher than those of industrial workers generally. In Detroit for example, recent construction settlements have been in the range of 30 to 35% in hourly rates and fringe benefits. A recent newspaper item reports a contract whereby plumbers in Philadelphia have obtained a new wage contract increasing their rates by \$3.25 an hour to a level of \$9.76. On a 40-hour week basis this would give the average plumber an annual income of \$19,250. In San Francisco plumbers have negotiated a wage scale which will go to \$10.65 an hour. The Department of Labor reports that the average weekly wage in contract construction in January 1969 was \$164.53 for a 36.4 hour week. The average weekly pay check in manufacturing for a 40.5 hour work week was \$126.36. The average wage in contract construction of \$4.52 was almost 50% higher than the average hourly wage of \$3.12 in manufacturing. It should be noted that these wage gains by the building construction unions have not been the result of any genuine collective bargaining with contractors, but have for the most part been accomplished by a take it or leave it demand by the unions. It is well known that for many years the building trades unions have followed a policy of restricting apprenticeship in order to limit their membership rolls. They have thus created an artificial shortage of trained workmen in the industry and they are now reaping a bountiful harvest of excessively high wages at the expense of the general public and the national welfare.

There is the further fact that the sum total of the special privileges given to them under the National Relations Act places the building trades unions in a category exempt from the rules of conduct applicable to unions in other industries. They are for all practical purposes free from legal restraints except for the narrow ban on secondary boycott picketing carried on for the purpose of shutting down an entire construction project because one union may have a dispute or grievance against one of several contractors or subcontractors on the project. But the officials of the building trades unions, conditioned as they are to the unbridled exercise of power, find even this one mild restraint intolerable, and demand that it be removed. What they want, in other words, is to get out from under the restraints of the National Labor Relations Act entirely, while still claiming whatever benefits the Act can give them.

The underlying purpose of the National Labor Relations Act was to protect the rights of individual workers against abuse by either employers or labor unions. The secondary boycott prohibitions of the Act were designed expressly to protect the neutral employer and his neutral employees against union pressures to force a strike or work stoppage which would cause them to be deprived

of their employment and earnings. It is thus perfectly obvious that H.R. 100, by depriving individual workers in the construction industry of this protection, would subvert the very purposes for which the National Labor Relations Act was passed. No amount of semantic argument can disguise this fact. For the construction unions the name of the game is power; and H.R. 100 would rig all the rules of the powers game in their favor.

STATEMENT OF FRANK H. INSCHO, JR., PRESIDENT, NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS

As President of this Association I've become increasingly aware of the construction problems across the country, particularly in the area of wage demands and manpower shortages. H.R. 100, if passed, would only add to these problems and at the same time create new ones. If Congress is sincere about rebuilding the cities, it should be initiating helpful solutions to the problems already in existence and then we can move forward with rebuilding the sorely needed new neighborhoods.

Our Association is directly interested in this legislation and has opposed this legislation in past years and opposes this legislation as now written, in the sincere belief that a strike or picketing must be directed only at the employer with whom the dispute actually exists.

If H.R. 100 is passed, any construction job in the United States can be brought to a complete halt by putting a picket on the job. There are far too many labor disputes existing in this country today. H.R. 100 would not only compound this problem but have a very serious effect on the economy of the country. Serious work stoppages caused by secondary boycotts would bring increased unemployment, higher construction costs, product boycotts, increased violence at construction sites and increased union action against non-union employees.

It can easily be seen why the AFL-CIO has perennially pushed this bill since it would compel all construction firms to bargain or go out of business.

Construction projects do not involve one business entity, as usually exists with an industrial company, but in most instances are comprised of a general contractor and many subcontractors who may or may not work directly for the general contractor. If this bill were to pass, all subcontractors employed on a construction project would be adversely affected if only one member of the "wrong" union or open shop contractor is working on the project. This situation results in injury to disinterested third parties.

This legislation, if enacted, would single out the construction industry, through legalization of the secondary boycott, and lead to the "closed shop" which is now outlawed by Taft-Hartley. It would lead not only to the "union shop" but straight to the "closed shop" because those contractors, subcontractors and material suppliers who are not unionized and who are not affiliated with the AFL-CIO Building Trades Unions would be prime targets for secondary boycotts which would then be legal under the provisions of this bill. H.R. 100 would divide the industry into union and non-union shops. It would ultimately lead to the "closed shop" as a practical reality. If this happens, the Owner, the Public, the Architect, the Contractor, and even the Government will have little or no control over the construction industry for it will surely be in the hands of the all-powerful building trades unions.

Anyone who thinks the construction project is one legal entity is naive of the operations of the construction industry and we reject the contention made by the building trades unions that contractors involved on a construction project are one and the same party.

The bill is written so that it could be construed to legalize almost any action a union might wish to take so long as such action takes place at a construction site. Because of this site limitation, it is generally described as limited to the construction industry. However, there is nothing in the bill specifically to prevent its effect from reaching many employers far removed from the work site.

The types of union conduct which the bill would legalize at construction sites would include all types of activities embraced within the broad terms "any strike or refusal to perform services" and "any inducement of any individual employee by any person to strike or refuse to perform services." These terms would seem to cover practically any activity a union might wish to engage in, including total strikes and picketing to prevent delivery of products, partial strikes, slowdowns and similar harassing tactics.

It is clear that any manufacturer or employer constructing an addition to an existing plant or having alterations made or painting or repair work done could have his entire plant shut down because of a dispute on such work. A construction union could lawfully picket and induce production workers to observe its picket line, thereby bringing production to a halt.

It seems clear that the bill could be interpreted to permit secondary boycotts and product boycotts, not limited in their effects to employers working at the site. There would seem to be nothing to prevent such boycotts from stopping operations of an employer at whose premises the construction, alteration, repair, or painting is being performed. His entire plant and operations could be shut down by a picket line ostensibly directed against an employer on the construction or other work but which all employees refuse to cross. Similarly, a strike and picket line directed at an employer on the construction site who is using non-union equipment, materials, or other products, could result in a boycott of such products, no matter where or by whom they are made. The effects of this bill could be felt by every employer who makes any product or furnishes any services that enter in any way into the vast construction industry or into any of the types of work covered by the bill.

It is our members' view that this committee's time and effort could be well spent on a thorough review of the construction industry rather than one small section of the law which does nothing more than appease the wishes of the labor unions to the detriment of the construction industry.

STATEMENT OF W. L. CARTER, EXECUTIVE DIRECTOR, ON BEHALF OF THE NATIONAL CRUSHED STONE ASSOCIATION

The National Crushed Stone Association is a nonprofit trade association whose members engage in the quarrying of rock and the production of crushed stone in all sections of the United States.

The crushed stone industry's principal function is to serve as a materialman to the construction industry. Our industry's products are absolutely vital to the construction of roads, bridges, dams, airports, and to all type of commercial construction. In addition, steel, lead, glass, paint, agricultural, and other so-called "basic industries" require our industry's products in order to produce their own.

The U.S. Bureau of Mines in its preliminary figures for 1968 set the production of crushed and broken stone in the United States at more than 800 million tons with a valuation of \$1.3 billion.

Because of the close and vital relationship of the crushed stone industry with the construction industry, crushed stone producers are aware of the overwhelming pressures that the construction unions are able to bring to bear, and there is no doubt that the crushed stone industry, as well as the public in general, will be adversely and gravely affected as a result of the enactment of H.R. 100.

THE LAW AS TO SECONDARY BOYCOTTS

In 1947 Congress outlawed the type of activity—secondary boycotts—which the proposed legislation would now authorize. With the enactment of Section 8(b)(4), and again when this section was amended in 1959, the Congress found that secondary boycott activity by *any* union was against the public interest and must be declared illegal. The Congress made no distinction as to industries. It found that the evils of the secondary boycott were clear and present regardless of the industry involved. In short, the law gives the same picketing rights and imposes the same limitations on both industrial and construction unions.

In 1951, the Supreme Court's decision in the *Denver Building Trades* case, 314 U.S. 675, confirmed the fact that construction unions could not use the secondary boycott in order to compel a general contractor with whom it had no dispute to stop doing business with a non-union subcontractor. The union's picketing in that case was declared unlawful because it was directed at a secondary employer.

However, the law has not foreclosed the right of a construction union to strike and common-site picket a primary employer with whom it has a dispute. In its *Moore Drydock* decision, 92 NLRB 547, the NLRB held that a construction union, which has a lawful dispute with an employer at a common site, may

picket at the site if the following safeguards are observed: (i) the picketing is strictly limited to times when the primary employer's employees actually are present at the common site, (ii) at the time of the picketing the primary employer is engaged in its normal business at the situs, (iii) the picketing is limited to places reasonably close to the operations of the primary employer's employees, and (iv) the picketing discloses clearly that the dispute is with the primary employer. In more recent cases the Board has relaxed these standards so as to extend greater latitude to construction unions in the picketing of construction sites.

Thus, a union, which in good faith adheres to these reasonable rules, may picket at a construction site any employer with whom it has a dispute. Moreover, picketing conducted in accordance with the *Moore Drydock* criteria will not be enjoined merely because the picketing may have incidental or unintended effects on other contractors and employees at the construction site. These standards are not difficult to observe. They are designed to strike a balance between the rights of unions to strike—and the rights of neutral parties, including the public, to be free from the harmful effects of a secondary boycott.

THE PURPOSE OF H.R. 100 AND ITS MYTH

According to proponents of H.R. 100 the object of the bill is simply to remove an alleged inequity against the picketing rights of construction unions arising from the *Denver Building Trades* case. It proposes to render the provisions of Section 8(b)(4)(B) inapplicable to labor disputes occurring at construction sites. Stripped to its essentials, it seeks to permit construction unions to engage in unlimited common situs picketing—i.e. secondary boycott activity. It is obvious that what is at stake here is not "equity," but rather an attempt to place the entire construction industry at the mercy of secondary boycott pressures with all the attendant results.

Viewed realistically, it is clear that enactment of H.R. 100 would amount to nothing less than a grant of special privileges to a group which has already been accorded a preferred status under the law. The construction unions may, for example, lawfully bargain for prehire contracts, hot cargo contracts, seven-day union shop, job notification and minimum training requirements. This package of special exemptions has not only impinged upon the basic rights now guaranteed to employees and employers in other industries, but more importantly these special exemptions enable the construction unions to impose dictatorial and inflationary wage settlements at the ultimate expense of the public. To add another special exemption by enacting H.R. 100 will give the construction unions an additional powerful economic leverage for extracting even higher wage demands.

In addition to accelerating the already spiraling costs of construction, the inevitable consequence of H.R. 100 will cause the involvement of neutral employers in labor disputes not their own and further deprive other employees of their fundamental rights.

INVOLVEMENT OF NEUTRAL EMPLOYERS

The enactment of these proposals will cause neutral employers working at a common site to become involved in labor disputes which are not connected in any way with the neutral employer or with his employees. Under the provisions of this legislation, both the general contractor—whose entire project could be shut down by a picket line thrown up by a union having a dispute with a single subcontractor on the job—as well as neutral subcontractors working at the same site could find themselves in a position of having increasing pressure brought to bear upon them to encourage or force a particular subcontractor to settle its dispute with the union in order for everyone to be able to get to work.

The following example illustrates the manner in which a crushed stone producer would be affected by a labor dispute arising from the union action against another subcontractor on a government project. The stone producer supplies stone to a subcontractor who sells ready mixed concrete to the general contractor on a construction project. When the construction union has a dispute with one of the other subcontractors and throws a picket line around the construction site, the stone producer would be unable to make deliveries of stone to the subcontractor at the site until the dispute was resolved. It is immaterial that the stone producer is two steps removed from the dispute, or that he has always maintained successful labor relations and, in fact, at the time may have a collective bargaining agreement with another union or *even the same union*.

If we assume, on the other hand, that the construction union's dispute is with the stone producer, the union, by putting up a picket line around the project site, could cause the general contractor and his subcontractors to bring pressures to bear on the stone producer to settle in favor of the union's demands in order to get the job under way.

The effect, therefore, of the enactment of these proposals would be to legitimize secondary and even tertiary pressures against neutral employers at a job site when the union has a dispute with only one employer. Under these circumstances, every contractor engaged in work at a construction site would automatically become embroiled in the labor problems of every other contractor engaged at the site.

EFFECT UPON BASIC RIGHTS OF EMPLOYEES

Section 7 of the National Labor Relations Act provides that it is the right of employees to join or not to join a labor union. In addition, it protects the right of employees to decide for themselves which union they want as their bargaining representative. These rights are protected against infringement by either employers or unions. For example, Section 8(b) (1) (A) prohibits a union from restraining or coercing employees in the exercise of their rights; Section 8(b) (7) prohibits a union from picketing an employer for organization or recognition when a majority of his employees do not desire that union as its bargaining representative.

H.R. 100 would allow a union to do indirectly what it cannot do directly. For example, a construction union could lawfully compel secondary employers to do its organizing by common-site picketing these contractors until they quit doing business with the primary employer. With this pressure brought to bear upon a primary employer, he has the alternative of either discontinuing work at that construction site or requiring his employees to join the union. The result is that compulsory unionism would be imposed for the construction project and the employees would be deprived of their basic rights to select a bargaining representative of their own choosing or to refrain from union membership.

INFLATIONARY EFFECT OF H.R. 100

Members of the building trades unions have in the recent past experienced wage gains far in excess of those gained by industrial workers generally. In spite of an alleged handicap of inequities in picketing rights, the construction worker today is undoubtedly the highest paid union workman. The Department of Labor, for example, reported that the average hourly wage for construction workers in January 1969 was \$4.52 and the average weekly pay check for a 36.4 hour week was \$164.50. In comparison, the average hourly wage in manufacturing was \$3.12 and the average weekly pay check for a 40.5 hour week was \$126.35.

It cannot be doubted that the chief cause of the building industry's inflationary spiral lies in the wage increases demanded and received by construction workers. Wage settlements in the construction industry have risen at an alarming pace since 1960 and have consistently exceeded settlements in other segments of our economy. Moreover, as was pointed out in the May 1, 1968 statement of the President's Cabinet Committee on Price Stability...

"Wage-price developments in the important construction sector spread inflation throughout the economy by raising costs elsewhere and by intensifying wage demands in other industries."

The added economic leverage of secondary boycotts that would be permitted by the enactment of H.R. 100 will surely have the inevitable effect of accelerating the inflationary spiral now existing in the construction industry. This means ever-increasing costs in the construction of homes, factories, stores, schools, hospitals, and other public construction.

CONCLUSION

Congress determined long ago that the secondary boycott was an abusive power that unions had used to the detriment of both employees and employers as well as the public—and that its use should be stringently regulated. H.R. 100 represents a return to the use of that abusive power and, as a wedge in the door, it constitutes an unwelcome precedent for which there exists no valid justification. The "equity" H.R. 100 would restore to the construction unions is far outweighed by its destructive effect upon the rights of employees, the injury it imposes upon neutral employers, the strain it places upon the national labor policy of promoting industrial stability, and, perhaps most importantly, by its inflationary effect upon the costs of construction.

It is for these reasons the National Crushed Stone Association, on behalf of its members and the industry, opposes the enactment of the proposals contained in H.R. 100 and similar bills.

THE AMERICAN INSTITUTE OF ARCHITECTS,
St. Louis, Mo., May 9, 1969.

HON. FRANK THOMPSON, JR.,
Chairman, Special Subcommittee on Labor,
U.S. House of Representatives, Washington, D.C.

[Re: H.R. 100, 91st Cong., first sess.]

DEAR MR. CHAIRMAN: Since the schedule of the Special Subcommittee on Labor would not permit appearances by all the individuals and organizations desiring to testify on the so-called situs picketing legislation, H.R. 100 and similar bills, I would appreciate it if this letter expressing the views of the American Institute of Architects would be included in the hearing record.

H.R. 100 would amend the Taft-Hartley Act prohibitions against secondary boycotts at construction sites. The law now prohibits strikes and other attempts to induce employees to refuse to work if the object is to force one employer to cease doing business with another. As it now stands, the law protects innocent neutrals, such as architects, from being drawn into disputes not of their own making and over which they have little control. If enacted, H.R. 100 would change this and would have a very undesirable impact on the construction industry.

The architect has a singular and primary role in the construction process. He is in every sense the public's representative for he designs the building, selects the materials, develops construction methods and frequently assists in the selection of contractors and subcontractors. Indeed, he represents the owner in all phases of a project's development. His ultimate goal is a well-planned, soundly constructed and aesthetically pleasing structure.

The American Institute of Architects opposes H.R. 100 because we believe that permitting secondary boycotts at construction sites will materially interfere with the orderly construction process, to the great detriment of the public.

Despite assurances by proponents of H.R. 100 that product boycotts would not be sanctioned, the AIA believes that this would be an indirect effect of the legislation. If the bill became law, an architect would be well advised to select only those building materials which would not incite a labor union to "refuse to perform services" at the building site. This would have the undesirable effect of tending to deprive an architect of his free choice in the selection of building materials. It would be exceedingly difficult for an architect to serve his client under such an onus.

We think it is important to emphasize that if the legislation is approved by this Congress it will destroy the healthy competition that now exists in the construction labor market and it will surely restrict the architect's role.

No special circumstances exist for granting the building trade unions an exemption from Taft-Hartley prohibitions against secondary boycotts. From considerable experience with such unions, the Institute believes that they presently have sufficient means at their disposal to insure fair dealings with contractors and subcontractors.

Sincerely yours,

GEORGE E. KASSBAUM, FAIA,
President.

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