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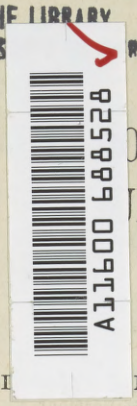

HEARINGS

BEFORE THE

COMMITTEE ON
OR AND PUBLIC WELFARE
NITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

EI MILLER, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

MAY 7 AND 8, 1970

Printed for the use of the Committee on Labor and Public Welfare

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NOMINATION

THURSDAY, MAY 7, 1970

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

The committee met at 10.20 a.m., pursuant to notice, in room 4232, New Senate Office Building, Hon. Ralph W. Yarborough (chairman of the committee) presiding.

Present: Senators Yarborough (presiding), Pell, Eagleton, and Javits.

Committee staff present: Robert O. Harris, staff director; John S. Forsythe, general counsel; Eugene Mittelman, minority counsel; and Peter C. Benedict, minority labor counsel.

The CHAIRMAN. The Committee on Labor and Public Welfare will come to order. The matter before the committee at this time is the hearing on the nomination by the President of Mr. Edward B. Miller of Illinois to be a member of the National Labor Relations Board for a term of 5 years expiring December 6, 1974, vice Sam Zagoria, whose term has expired.

I order placed in the record at this time a copy of the law creating the National Labor Relations Board, delineating its authority, his biographical sketch, and a copy of the article from the New York Times of Saturday, February 21, 1970, with a narration of some aspects of Mr. Miller's career.

It will be placed in the record at this point.

(The documents referred to follow:)

[Excerpt From Public Law 101, 80th Congress, as Amended]

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 to

determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or taek a escret ballot under subsection (c) or (e) of section 9 and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment *sine die* of the session of the Senate in which such nomination was submitted.

* * * * * * *

BIOGRAPHICAL MATERIAL OF EDWARD B. MILLER, NOMINATED TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Name: Edward B. Miller.

Home Address: 2356 Colfax Terrace, Evanston, Illinois.

Born: Milwaukee, Wisconsin—March 26, 1922.

Parents: Dr. and Mrs. E. A. Miller, Clintonville, Wisconsin (both deceased).

Education: Elementary and high schools—Clintonville, Wisconsin public schools. College—B.A. University of Wisconsin, 1942. LL.B. University of Wisconsin, 1947.

Military Service: Active duty, U.S. Naval Reserve, 1943–1946; rank at release from active duty—Lieutenant, Supply Corps.

Professional Career: Associated with Pope and Ballard (now Pope, Ballard, Kennedy, Shepard & Fowle) since graduating from Law School in 1947, except for approximately one year (1951–52), during which served first as Executive Assistant to the Industry Members, and later as an Industry Member of the Regional Wage Stabilization Board, which administered wage controls in Illinois, Wisconsin and Indiana. Became a partner in the Pope, Ballard firm in 1953.

Marital Status: Married to Anne Harmon Phillips.

Children: Four children by a previous marriage. Two step-children.

Current or Recent Outside Activities: Member, Illinois Governor's Advisory Commission on Labor Management Policy for Public Employers (1966–1967).

Lecturer, American Management Association and Midwest Industrial Management Association.

Member, Labor Law Section, Illinois State Bar Association.

Member, Wisconsin State Bar Association and Illinois Bar Association.

Member, Law Club; Legal Club of Chicago.

Member, Illinois State Chamber of Commerce Labor Relations Committee.

Less Recent Outside Activities: Former Chairman, Midwest Pension Conference.

Former Chairman, Labor Relations Committee, City Club of Chicago.

Former Member, Board of Directors, American Foundation for Continuing Education.

Held numerous lay offices in First Congregational Church of Evanston, including Chairman of Board of Deacons.

[From the New York Times, Feb. 21, 1970]

LABOR BOARD NOMINEE—EDWARD BOONE MILLER

WASHINGTON, Feb. 20.—When George Meany announced that the American Federation of Labor and Congress of Industrial Organizations would oppose President Nixon's nominee to head the National Labor Relations Board, some union lawyers in Chicago were almost embarrassed. The soft-spoken, dispassionate nominee, Edward Boone Miller, is a professional management lawyer who has mixed in labor disputes there for 20 years, and among his opponents he has built up a reputation as fair-minded, trustworthy and understanding of labor's position.

One prominent Illinois union lawyer, who spoke anonymously because of Mr. Meany's position, said of Mr. Miller: "Unions always end up feeling, sure, he's on the other side of the bargaining table, but he's a forthright, decent, honest, moderate guy."

Sheldon Charone, who has represented teamsters and machinists against Mr. Miller's clients, describes him as "a craftsman, a very reasonable practitioner."

"He's not a gung-ho type and he's no union buster," Mr. Charone said. "He really wants to work for middle-ground positions. He's a natural mediator. I don't know that he's any easier on the other side than the tablethumpers. But he really understands labor's position, which is the beginning of good bargaining."

Even those union men who admire Mr. Miller feel that there is reason in principle to oppose his appointment to a board that must be an impartial referee in 30,000 labor disputes each year. "The Government shouldn't be recruiting judges directly out of management practice," said one of Mr. Miller's friendly rivals. "Hell, no labor lawyer has even been appointed to that board."

EDUCATED AT WISCONSIN

Yet, as an individual, Mr. Miller gets high marks from the unions. Accordingly, his appointment is regarded as small consolation to the national business organizations that campaigned hard for a bold, conservative turn at the N.L.R.B.

Mr. Miller, who took his undergraduate and law degrees from the University of Wisconsin, has been a partner in the prestigious Chicago firm of Pope, Ballard, Uriell, Kennedy, Shepard & Fowle since 1953.

He has represented, among others, the Hammond [Organ] Corporation, the Continental Can Company, and the Chicago Symphony Orchestra, and he has been successful enough for his prospective $42,500 salary at the N.L.R.B. to mean a pay cut.

However, he has never argued what the legal world considers a definitive case, and until his nomination Wednesday he was virtually unkown outside the Chicago bar.

His closest brush with celebrity came two years ago in what was essentially a personality clash between two temperamental musicians. Jean Martinon, then conductor of the Chicago symphony, dismissed his first oboe player, Ray Still, for insolence and insubordination. The musicians' union forced the dispute to arbitration, and in a compromise that Mr. Miller now considers exemplary, Mr. Still was found guilty of misconduct but resinstated to the orchestra.

Through 1966 and 1967, Mr. Miller served on a special committee appointed by then-Gov. Otto Kerner of Illinois to draft a labor law covering public employes. Union representatives on the committee concurred with Mr. Miller in proposing forced arbitration and barring strikes in disputes involving government workers. But labor lobbyists in the Illinois Legislature objected to the no-strike clause and killed the bill.

SON OF A DOCTOR

Mr. Miller was born in Milwaukee on March 26, 1922, and grew up in the town of Clintonville, Wis., where his father was an eye, ear, nose and throat doctor. Mr. Miller served with the Navy in the Philippines for two years during World War II.

After his first marriage ended in divorce two years ago, he married the former Anne Phillips on Valentine's Day last year. Mrs. Miller, a staff lawyer with the N.L.R.B. in Chicago, speaks of her husband with professional awe as well as affection.

"When I write a brief," she said this week, "I sweat, I die. When Ed writes a brief, he sits back in an easy chair, feet up on the ottoman, and dictates into a machine. He is a tough editor of his own work, but he never has to change much."

According to his wife, Mr. Miller also writes excellent verse, plays superior chess, and is a classical pianist "who would really love to play good jazz piano."

The CHAIRMAN. The biographical material shows that Mr. Miller is a native of Wisconsin, educated in elementary and secondary schools of Clintonville, Wis., with a bachelor of arts from Wisconsin University and a law degree from the University of Wisconsin.

He had 3 years active duty in the Navy, with the rank of lieutenant at completion of World War II, and much additional biographical material.

He served as a member of the Illinois Governor's Advisory Commission on Labor Management Policy for Public Employees, and was a lecturer at the American Management Association and the Midwest Industrial Management Association.

He is a member of the labor law section, Illinois Bar Association and a member of the Wisconsin State Bar and Illinois Bar Association, and numerous other positions.

He has held numerous lay offices in the First Congregational Church of Evanston.

Mr. Miller, your Senator is here from your State to present you to the committee. We welcome our colleague from Illinois, and I will say if he is here advocating your confirmation, you have a most able advocate.

Senator JAVITS. Mr. Chairman, before we hear from Senator Percy, may I just say that I would like the record to show that the chairman, at great personal inconvenience, and notwithstanding the enormous press of business of the committee gave us this hearing on confirmation at an earlier date than any of us had any right to expect.

I want to express my appreciation to him for it.

The CHAIRMAN. I thank the ranking minority member for his kind remarks, and I will say that his persistence had something to do with this, but we regret the delay in this hearing, Mr. Miller, but I have had greater pressure in another State than I have had here for some weeks, and it terminated last Saturday, so the very first possible day we have scheduled these hearings.

Senator Javits has been very diligent. It is important that a vacancy on a very important board like this be filled. There were matters in my home State that made it impossible for me to be here for a hearing earlier than this.

I regret the delay.

Senator Percy.

STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator PERCY. Mr. Chairman, and Senator Javits, I am pleased to present Edward B. Miller this morning. He is a resident of Evanston, Ill., which is a community a few miles from my long time home.

He is well known throughout Chicago. He has spent 21 years in the field of labor relations. He has been associated for 23 years with one of the most prominent law firms in Chicago, properly known as Pope & Ballard, and has served as an industry member of the Regional Wage Stabilization Board and has also served in the area of labor-management relations in the State of Illinois, serving on the Illinois Governor's Advisory Commission on Labor Management policy for public employees.

He is the former chairman of the Labor Relations Committee, City Club of Chicago. So in his professional capacity and in his civic capacity, his educational experience, and all his inclinations, his whole life has been devoted to the field of labor—management relations.

I know that whenever labor-management experts are selected for key positions in the Government, they have either had to work essentially in the labor side representing labor, or essentially in the management side, and there is always a tendency on the part of management to resist an appointee that has come from the labor side, and vice versa. This is only natural, and it could be expected.

But in the checks that I made in Illinois, to the best of my knowledge, Mr. Miller not only is enthusiastically and wholeheartedly supported by industry relations people and the others, but also has been regarded as an utterly fair man, a man of great integrity, of considerable skill and knowledge and fairness from the standpoint of labor people who have worked with him and known him.

It would be a great surprise to me if he did not turn out to be a truly distinguished chairman in this important capacity.

His philosophy, his beliefs, fortunately, have been committed to writing. He has written extensively.

His articles have been published, and though I understand Senator Javits has something he may wish to put into the record, I felt the remarks made January 29, 1970, by Mr. Miller before the Illinois State Bar Association would be a very important document to submit, and with your permission, I would like to have it incorporated in the record, Mr. Chairman.

The CHAIRMAN. It is ordered printed as part of the record in accordance with the request of the Senator from Illinois, Senator Percy.

Senator PERCY. Thank you. I am joined in my support by Senator Ralph Smith.

(The remarks of Mr. Miller before the Illinois Bar Association follow:)

REMARKS OF E. B. MILLER FOR ILLINOIS STATE BAR ASSOCIATION, MIDYEAR MEETING (JANUARY 29, 1970)

The title assigned to me is "Lessons for School Negotiators from Private Industry." Since my 21 years of experience in the field of labor relations in the private sector have been devoted almost entirely to the representation of

management, my remarks are of course going to be cast in a management-oriented mold. This means that I will be passing on to you what school boards and school administrators might learn from the experience of their counterparts—that is, private management—in the conduct of labor relations and labor negotiations.

The first thing that any private or public management absolutely must do is to gain as much knowledge and understanding as possible as to what unionization and collective bargaining are all about. Some of our most severe and bitter problems in both the public and the private sectors arise not out of intentionally wrong actions or policies, but out of ignorance.

Although the organization of school employees is no longer a brand new phenomenon, I think it is still fair to say that most school boards and most school administrators have pitifully little knowledge or understanding of the processes of union organization or the processes of collective bargaining.

Let's talk first about a school in which teachers or other employees have not yet been organized by any labor organization and let's make comparisons with a private employer in the same situation.

The intelligently managed private concern knows, for instance, that it absolutely must keep abreast with modern personnel practices and policies, and be aware at all times of the range of competitive levels of fringe and economic benefits, so that it will not inadvertently fall behind the times in any of these respects. This takes some work, but any private concern will tell you that in the long run it is well worth doing. Well-advised school boards and school administrators ought to be doing the same thing. But a surprising number of them do not. I have been told by an organizer for the Teachers Union that if school administrations were not still living in the 19th century so far as personnel policies were concerned, the rapid expansion of the Teachers Union could never have occurred and would not be continuing to occur at as rapid a rate as it is.

Too many school administrators have failed to realize, for example, the importance of employee-management communications, the necessity of an effective and meaningful grievance procedure (not whether the boss' door is always open, but how often it swings), the crying need for someone to give genuine understanding to personnel problems and to have the authority to take action to cure them. Too many school boards have ignored the competitive salary data from nearby areas and have failed even to look at salary data from other areas of the state in establishing their own salary schedules. In short, systems have not always kept pace in the personnel area with what private management has learned to regard as an area in which modern methods and policies are just as essential as they are in other areas of the business.

Let's move on a step. The well-managed, non-union private concern obtains at least a preliminary grounding as to what is legal and what is practicable for it to do if a union begins a serious organizational effort among its employees. Do school boards and school administrators do the same? I am not at all convinced that they do. I have spoken to groups of school administrators about the problems presented by organization and I am always surprised at how many of them will come up and talk to me after the speech and say, in effect, "Well, your speech is very interesting and there must have been some school administrators here who really need this kind of information; but in our school, I am sure it is never going to happen."

Too many school boards and too many school administrators still take this view and feel that they don't need any knowledge or information about union organization or collective bargaing because "it can't happen here." Then when the organizational effort begins or the first demand for recognition by a union is made, there are crisis meetings and policies decided upon out of almost total ignorance. When mistakes are made, the cry goes up later—"Well Gee, we really didn't know anything about it and so we just did the best we could."

The problem is really made more acute in the public sector by the fact that there is no clear-cut body of law governing public school labor relations in Illinois. This means that a school board or a school administration faced with a demand for recognition or a serious organization effort by a union among its employees has very few points of reference from which to start. In the private sector, an employer can at least read the National Labor Relations Act, or a summary of it, and get some idea of what his rights and obligations are. Or,

he can call the offices of the National Labor Relations Board and at least be given some information about the framework within which he will be operating. No law and no public agency exists which can give a school board or a school administration this kind of help. But don't jump at the easy conclusion that since there is no law there are no problems. Quite the contrary is true. There are more problems, and the difficulty is that the inexperienced and uneducated school administration is not likely to even know what those problems are.

For example, in the private sector it is quite apparent from a reading of the law that when a demand for recognition is made by a union there are procedures available to conduct an election, so that the employees may have an opportunity to decide, by secret ballot, whether or not they want the organizing union to represent them. There are no such procedures in Illinois law and many school boards and school administrators are not even aware that such elections are, with some frequency, held by mutual agreement of the organizing union and an enlightened school board.

Or, if they are aware that it is usually possible to arrange such an election, they are likely to be unaware of the problems which should be faced up to in arranging for such an election. In the private sector we know, for example, that clearly supervisory employees are excluded, do not vote, and even if the union wins the election are not represented by the union. There is no such law in Illinois, but the practical problem exists when setting up an election as to whether or not the supervisors shall be included in the voting unit or if at least some supervisors are to be excluded, what level of supervision shall be excluded?

Furthermore, in the private sector there is some law around as to what are appropriate units. Thus, in a typical factory, for example, a union would not be successful in suggesting that an election be held among, let us say, a half dozen employees in just one unskilled department. The National Labor Relations Board will hold that such a limited unit is not appropriate. In the public sector, a union can ask to represent just a certain group of employees in order to get a start or a foothold and many inexperienced school boards or administrators would not even know that it ought to do everything in its power to prevent this kind of fragmentation.

Yet because there is no law, a school system faced with a demand for recognition, is frequently in a strong position to control the shape and size of the unit. Simply because there is no law or agency which is authorized to determine unit questions, the type of unit must be arrived at by agreement. Since a grant of recognition, or even a willingness to hold a recognition election, is something of real value to the union, often the union or unions will be willing to accede to the public employer's desires as to unit questions in order to gain his assent to recognition as to an election.

But the school board or other public employer who is not aware of the problems of unit fragmentation simply doesn't know that he can—or ought to—or *how* he can—avoid them. Here too, then, there are lessons to be learned from private industry.

These are but a few examples of the need for a recognition and understanding of what unionization and collective bargaining are all about. This kind of education is needed by a private employer. It is needed even more by the public employer in Illinois today, but I regret to say that it is often an unrecognized need.

The second useful importation from the private sector into the public sector is the private sector practice of preparing thoroughly both for negotiations and for administering the union agreement once it has been executed. Even pretty small private employers have learned that before commencing collective bargaining they have a real need to gather together certain types of information for use in that bargaining. A survey of wages and fringe benefits paid by other employers in the industry is an absolute must. The development of data as to the dollar cost of each cent per hour or dollar per week of wage increases, and the precise cost of adding an extra holiday or an extra week of vacation or any other fringe benefit as to which union demands are either actually in hand or anticipated, is a task which any experienced private sector negotiator knows must be completed before he even walks into the bargaining room.

Preparation for negotiations in the private sector also indicates the development of management proposals for the contract. These may be proposals in response to anticipated union demands or they may be proposals for provisions

which management wants to see included in the agreement whether or not the union makes any proposals in the given subject area.

A typical proposal is a "management rights" clause, reaffirming that certain areas of the operation of the business are reserved to management and are not subject to negotiation or grievance. I have been surprised to find that many school agreements contain no such clause. I would have thought that it would be particularly essential to have such a clause in public employee labor agreements in Illinois because in the absence of any law or precedent in this state there can be no assurance that management policies of any kind or variety will not be challenged either in negotiations or in the grievance procedure, or both.

In the private sector we have a fairly well-established set of precedents flowing from both the decisions of the National Labor Relations Board and the decisions of Arbitrators interpreting private agreements which define, at least broadly, limitations upon the negotiable areas. Those guidelines have changed some over the years and in recent years we have heard expressions of concern that matters which used to be clearly regarded as legally non-negotiable are becoming legally negotiable. Because of these concerns, private industry negotiators have taken considerable care to develop management rights clauses in order to define those things which are clearly within the exclusive province of management. In the absence of any law or precedents or guidelines in the public sector, it is of particular importance that public employers incorporate some such guidelines in their labor agreements.

Management rights clauses, are, of course, only one of many clauses which public management should have drafted and ready in connection with preparation for negotiations.

From examining a number of school agreements, I have the unhappy feeling that public management has sometimes not done its homework every carefully in this connection. I find in those agreements, for example, grievance procedures which include tight time limitations upon school administrations in answering grievances, but no time limitations at all upon the employees or the union as to the time within which grievances must be filed or appealed to the next step, or else be considered waived. The fact that I do, on the other hand, find some few school agreements with clear time limitations applicable to both the employee and the union would indicate to me that if school managements are prepared, and do insist upon such limitations, they can be achieved through the collective bargaining process.

The preparation of management proposals is not only important in terms of obtaining certain assurances in the agreement which are of importance to management, but the preparation of management proposals and working from those proposals is also considered in private industry to be of some strategic importance. The general format of some school agreements which I have examined would suggest that the negotiations have centered almost exclusively around union-drafted proposals. It looks as though the private industry lession of doing one's homework and being thoroughly prepared for negotiations is a lesson which may yet have to be learned by at least some public school negotiators.

A third lesson which public management can, I think, learn from private management is that the need to preserve management flexibility is of genuine importance in both the day-to-day and the long-term conduct of an enterprise. It is of course axiomatic that any written agreement governing wages and hours and working conditions of employees imposes restrictions which do not exist without such an agreement. If there is no written agreement concerning wage levels, there is nothing, in the private sector at least, to prevent an employer from changing those wage levels whenever he determines that it is desirable to do so. And without any written agreement, any fringe benefits can be unilaterally changed in management's discretion. This is not always as true in the public sector, of course, because state statutes may require certain levels of compensation to be maintained or may create certain state-wide fringe benefits such as retirement plans and the like. Nevertheless, there are areas in which it must reasonably be anticipated that any written agreement will reduce the degree of flexibility which public management has heretfore enjoyed.

But it does not follow that just because this new locomotive has motive power, it should not have brakes. There is no reason for a school board or a school administrator to assume that because his teachers or other employees are now represented by a union he must accept union or employee participation in every

area of the operation or that every possible action which he may have to take during the course of the agreement is to be subject to union-imposed restrictions.

Management in the private sector has learned this lesson through sometimes painful experience. The inflexibility of the work rules in the railroad industry, for example, provides a rather dramatic illustration of how a management which once accepts unwise limitations upon its freedom to manage and to conduct its business in an efficient and economic manner can find itself so hamstrung that it becomes almost impossible to keep up with the times and to meet changed conditions in a sensible way.

Public employers should profit from this experience of private industry. It should recognize that every time it agrees to make areas of its operations subject to mutual agreement or opens the door to such agreements by agreeing that certain areas are to be subject to mutual study—a harmless enough sounding term which is a favorite ploy of union negotiators—it has lost flexibility which it may some day (if not necessarily tomorrow) desperately need.

Once again, I am not convinced that school negotiators have as yet learned this lesson. In the first collective bargaining agreement entered into between the Chicago Board of Education and the Chicago Teachers Union, for example, there was created an amazing proliferation of joint committees, of agreements for mutual study and the like. That agreement provided for a joint committee to review procedures regarding personnel files, a joint committee to study desirable teaching load goals, union representation on each city-wide curriculum guide committee and city-wide text book evaluation committee, a joint committee of board and union representatives to study the basic philosophy and method of compensation for teachers engaged in extra-curricular activities, a joint committee to develop assignment and transfer of policies for attendance officers, a joint committee to review all transportation allowances, and a number of others.

I may be old-fashioned, but I am still a believer in the old saw that a camel is a horse built by a committee. And I do not believe that any institution—public or private—can be operated efficiently by a sort of continuing town meeting approach.

I accept fully—and I think that school and other public authorities may as well accept fully—that as the organization of public employees grows and develops, unions representing public employees will become entitled to very much the same rights as have been afforded to unions representing employees in the private sector. But acceptance of these facts of life does *not* mean that school boards or school administrators should abdicate their fundamental responsibility to manage and administer those institutions in the public interest.

Yet if school management does not keep alert in each and every negotiation and in its day-to-day conduct of the enterprise to the need to preserve and to exercise with authority and confidence those managerial functions which have been entrusted to it, this right and duty to manage are likely to be eroded until they become virtually non-existent.

Public managements, like private managements, should, I think, so conduct themselves that it is clear that they are going to continue to manage. They will have to give due recognition to the right of the empolyees and their representatives to question or challenge management's actions if they infringe upon guarantees afforded to the employees or if they are exercised in an arbitrary, capricious or discriminatory manner. But the fundamental right to manage—the right to *act*, subject to challenge—should not be allowed to deteriorate to the point where every action must be discussed, debated and a consensus reached before any action is taken. Built-in inertia is a problem in any public—or private—institution. Let us not permit unwise agreements to imbed that inertia in immovable concrete.

To this end, I suggest that school negotiators can learn from their private industry counterparts the need to preserve management flexibility, the need for awareness of the threats to that flexibility which can result from unwise agreements, and the need to examine with great care any union proposal which bristles with references to actions which are to be taken only "by mutual consent" or which are to be delegated to "joint committees."

The last lesson which I will mention as being transferable from the private sector is that the advent of union representation of employees creates a need for expertise. This is perhaps a summary or condensation of everything else I have said today.

I have pointed out first, that there is a need for recognition of what unionization and collective bargaining are all about; secondly, a need for thorough preparation for negotiations and for the process of administering a labor agreement; and thirdly, to be ever conscious of the need to preserve and to exercise responsible managerial flexibility. None of these needs can be met without acquiring and utilizing new and special skills. From this day forward, there will be a very special place for real skill in both negotiations and personnel administration in our schools.

Private management was in a number of instances slow to learn this lesson. Only a couple of decades ago did we begin to see listed among the prime executive officers of our larger corporations a vice president in charge of industrial relations. It has been a relatively recent development that small employers have added a skilled industrial relations manager and a trained personnel department to their managerial staffs. Only within the last few years have those very small private employers—too small to be able to afford to develop internal expertise in this area—begun to join together in an association which can secure on either a part-time or full-time basis services of someone qualified to deal intelligently with the problems inherent in the negotiation and administration of labor agreements.

But private industry—however slowly—has learned the lesson. Why don't public emlpoyers, including school systems, profit by this experience? Today I see school negotiations occurring with no one at the bargaining table rerpesenting the school system who has any depth of experience in labor relations matters. I see school boards meeting and deciding on policies in the face of a demand for recognition by a union with nobody on that board having ever been faced with a union situation and with no one present at the meeting qualified to advise in a professional way as to either policy or procedure. I see school systems continuing to operate after they have executed a union agreement, leaving the administration of that agreement to the same administrative personnel as have been with the system for years, without adding to their staffs anyone skilled in the field of labor relations and with no provision in the school budget for securing the services of professional attorneys or consultants or advisors even in the event that some emergency should arise, much less on a continuing basis.

Well, you may say, as a result of this have you seen any major catastrophes? To be fair, in general I would have to say no; although I have seen what seemed some rather stupid mistakes being made. But from my experience in the private sector I know that you do not often see catastrophe in one visible dramatic event in this area. You see it too late and you see it after the damage has been done.

Our firm was consulted about a year ago by a company in private industry which was very nearly on the brink of bankruptcy. As a result of their crisis they were obtaining the advice of consultants and professionals in various fields. They conceded when talking to us that they had had no really qualified or professional assistance, either from within or without, for many years in the field of labor relations. When we took a look at their collective bargaining contract the results of this were pretty obvious to us. Agreements had been made and restrictions on operations accepted which were shocking to us and were obviously crippling to the company. Many of the changes which they needed and now wanted to make in their manufacturing operations could not be achieved because of the existence of a long-term bargaining contract which prevented them from making them.

Attitudes had developed in the work force which were extremely detrimental to efficient production and were now engrained through years of sloppy, uninformed administration of the labor agreement. They were extremely disappointed when we told them that no expert could pull a rabbit out of a hat and cure these problems, and that it would take years for them to escape the web which they themselves had inadvertently woven.

The situation was too far deteriorated, the commitments in the agreement were binding and would have to stay in effect until the contract had run its term. Past practices, firmly entrenched, would in a number of areas have led any Arbitrator to hold the company could not now make an about face solely by unilateral action. In short, the cancer which could have been stopped in its early stages had almost irrevocably spread too far.

School boards and other public bodies risk this same kind of deterioration in the conduct of their affairs if they fail to recognize, at what is now an appro-

priately early stage, the need for expertise. If those in charge of determining policies for school systems will take a lesson from private industry, they will initially seek that expertise from those on the outside who have it, and will begin now to train and develop internal staffs which will have it for the future. They will lay plans and make budgets now to staff themselves with full-time persons charged with the task of bringing their knowledge and experience in labor relations and personnel administration to bear on this vitally important new area which is fast becoming an integral part of the administration of a school system.

Only in this way can schools really profit from the many lessons which can—and should—be learned from the private sector.

Senator PERCY. I know our Governor feels honored indeed that once again Illinois has been selected for a high government post, and we feel that a very distinguished job will be done in a very important area, and having spent my entire adult life, 25 years, in business in the management end of it, in politics I have had to develop a whole new relationship with the labor community, and I think that I have learned a great deal about their thinking and their problems in the last 3½ years, and have worked intimately with the labor leadership in Illinois, as well as Walter Reuther and George Meany, and others, on the national level.

I could certify to them, too, that here is a man of great integrity, with compassion and intelligence, and I think in the trying period I see ahead in the field of labor management relations, he can do a commendable job.

Thank you, Senator Yarborough.

The CHAIRMAN. Thank you, Senator Percy.

That is a strong statement, not merely in the strength of endorsement, but the thoughts that are expressed.

Senator Javits, do you have any questions?

Senator JAVITS. I am very happy that Senator Percy has come here.

Senator PERCY. Thank you very much.

The CHAIRMAN. Thank you, Senator Percy, for coming.

Mr. Miller, some question has been raised about your stockholdings, whether there would be any conflict of interest that would develop or not.

I understand Senator Javits has been giving this some study, so before I ask any questions, I will yield to him for questions or any clarification on that point.

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Chairman, I ask unanimous consent that an article which appeared in January 1970 in a publication called the "Business Lawyer" which is the text of a speech made by the nominee, before the Mid-Western Industrial Management Associates on May 5, 1969, may be made part of this record.

The CHAIRMAN. It is ordered printed in the record.

(The article referred to follows:)

[From the Business Lawyer, January 1970]

HOW TO CREATE BUSINESS FOR LABOR LAWYERS

(By E. B. MILLER*, Chicago, Ill.)

It was a good while after I had agreed to participate in this program that I faced up to the task of deciding what I could discuss with you that would be truly significant. I approached that task originally in the customary manner—

that is to say, I tried to sort out the things which I thought would be of most interest to *you*. But it is just this kind of hypocrisy for which our generation is criticized nowadays by the younger generation, so I decided that on this occasion I would take a much more direct and honest, straight-forward approach.

So instead of trying to pick a subject that might be of the greatest interest to you, I decided to pick the subject which has the greatest interest to me. I stripped away all of the veneer of hypocrisy which might otherwise have tempted me to tell *you* how what I am about to say would help *you*. In this new, modern spirit of frankness and pitiless self-analysis, I want to tell you right now that the only thing which really interests me and my only reason for being here with you is so that *you* can help *me*.

Now you people are businessmen and, as you know, I am a labor lawyer who represents businessmen. And what does a labor lawyer need from businessmen? He needs business.

And so, what I really want to talk to you about this noon is how a businessman can make more business for labor lawyers. That is the real topic of my speech. It is a field I know something about, and I think I can give you a few simple rules. If you follow them carefully I can assure you that I personally, and all of my brethren at the Labor Bar will be busier, happier, richer—and, of course, appreciative of your help.

Let me talk to you first on the subject matter of "How to Stimulate Grievances," or—for those of you whose companies are not unionized—"How to Stimulate Unionization." The rules in either case are the same.

I would urge you first of all to make it clear to your managers, to your superintendents, and to your supervisors that they are not to waste their time getting to know the people who work under their supervision. Make it clear that you're not paying them to fool around learning the first names or the nicknames of the employees, or the names of their wives, or how many children they have, or any kind of petty personal nonsense like that.

If you follow carefully this first rule, I can assure you from my own personal experience that you will succeed in stimulating grievances, in stimulating your employees' interest in unions, and therefore in adding substantially to your needs for labor counsel. One of the first things an experienced labor lawyer does when called upon for help by an employer faced with a union organizing campaign is to meet with the first line supervisors. He goes down the list of employees in each supervisor's department and asks him what he knows about each one of them. Now I have encountered many situations in which I find that the supervisor is just barely acquainted with the employee's name, knows nothing about how many children he has, where his kids are in school, and so on. And in almost every case where that is true, you will find that that supervisor's department is one of the easiest targets for unionization. And you will often find in an organized shop that it is that supervisor's department where the employees turn up with the most grievances—and often the most unreasonable ones.

A close corollary to this first principle is this: Be sure to create an atmosphere in which your supervisory peronnel don't waste a lot of time listening to employees' gripes. Be particularly sure that they don't listen to rumors. You see, if your management people should get in the habit of listening to employees, it is quite possible that they might find out what their gripes are. And if they know this, in many cases they may find they can do something about them. Likewise, if they listen to rumors, they may very well stop a false rumor before it starts to spread. Now if those things are done regularly and systematically, let me assure you that there would be substantially less business around for me and my brethren.

There is no better ammounition for a skillful union organizer than frustrating, unanswered, petty gripes, and wild rumors which are never put to rest by a prompt and honest statement of facts by company representatives. If any of you have ever read the organizer's manual put out by the AFL–CIO you probably know that the organizers are told not to waste their time in the beginning of a campaign handing out leaflets, but instead to concentrate on getting to know the employees, finding out what their petty gripes are, and then capitalizing on these gripes to help organize other employees in the plant. So, as I have said, if you want to stimulate unionization and stimulate grievances and make

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*Member of the Illinois Bar. Text of remarks at Midwest Industrial Management Association meeting at Hot Springs, Arkansas (May 5, 1969).

business for us labor lawyers, just be sure that your fellow managers—and particularly your first line supervisors—don't listen to gripes, don't listen to rumors, and instead just tend to business. And if someone tells you that the real business of supervisors is people, you just tell him that he is a dangerous radical who is trying to confuse you with a newfangled, impractical idea.

A third fundamental rule—again closely allied to those I have already mentioned—is to create the impression that neither you nor any member of your management team really likes the people who work for you. You will find it of great help in creating this impression if you make it clear that you don't like your own job, and that what you do is a great burden and a nuisance to you. Let me give you an example of how this can work.

I have a client out in a middle-sized community in the State of Iowa. In this plant, because of the nature of the business and the type of equipment involved, there are quite frequently occasions on which maintenance men have to be called in outside their regular shifts to take care of trouble that develops unexpectedly with the manufacturing equipment. Because of the frequency of these call-ins, the labor contract contains specific provisions requiring that these assignments are to be rotated equally and fairly among all the employees who are available and qualified to perform the work involved. The maintenance foremen have a list on which they keep careful track of who is next up for any such emergency call-in.

One of the maintenance foreman made a mistake, and called in the wrong man. He discovered his error shortly after the man had reported out to the plant. He went to the man who had been called, explained his error, told the man he was sorry that it had happened, and explained the situation to the man who should have been called in but was not. Both men were satisfied and neither of them filed a grievance.

Two weeks later, a different foreman made the same kind of mistake. He told no one about his mistake, hoping it would not be discovered. The steward for the department, however, within a day or two, noticed the mistake and called it to the foreman's attention. When this happened, the foreman blew up, told the steward that the whole system was a big stupid nuisance in the first place, and made it very clear that as a foreman he just couldn't be expected to worry about all of these details that some stupid company negotiator had agreed to in the union contract. Well, you can guess what happened. We not only got a grievance, but we got a demand from the union that in this case—and in any future cases—any man who was missed on a call-in should be entitled to premium pay for any time that he missed on the call—a remedy which had never before been even asked for by the union. The grievance went all the way to arbitration, thus producing a case which was both interesting and profitable for me to try. Of course, it also created a pretty tense situation in the maintenance department and it was a rather expensive procedure for the company in terms of dollars, even though we ultimately won the arbitration.

The moral of the story is simple. The first foreman, who took the time and the trouble to make an honest, frank, sympathetic explanation of his mistake, didn't stimulate any grievance and didn't provide a dime's worth of business for the company's labor lawyer. The conduct of the second foreman followed the rule I am trying to convince you to follow—he was insolent rather than understanding, he made it clear that he didn't like at all what he had to do, and he make it equally clear that his own convenience was much more important to him than the question of fairness to his employees. He produced a nice little case for me. If you can instill this kind of attitude in your management team, your lawyers, too, can prosper.

A fourth rule—if you have a union contract or a published statement of company policy, make it a general principle in your organization that if it's possible to find a way around the provisions of the contract or policy and save a little money, always do it. Or if you can find a cute way to take advantage of some provision, for heaven's sake—don't let that opportunity go by. You know the type of thing I mean?

Well, for example, you may have to transfer employees in accordance with certain seniority provisions in your union contract or your company policy. But let us say that you have in that contract or policy statement a provision that you can temporarily transfer employees without regard to seniority if the temporary transfer doesn't exceed thirty days. Now you don't have to be terribly

clever to realize that if you transfer one man for twenty-nine days, and then transfer another one for twenty-nine days, and then transfer another one for twenty-nine days, you've hit upon a pretty cute trick. It's a cheap, economical way around the provisions of your contract or your policy. If you just go on doing clever little things like that, you can almost be sure that if you are operating under a company policy and don't have a union you soon will, or if you are operating under a contract with a union you can expect a mighty hot negotiation the next time around. In either case, you see, you will doubtless create a need to call upon your friendly local labor lawyer.

Now without detailed explanation, let me run through a few more quick, simple rules for stimulating unionization and stimulating grievances.

Rule five: If an employee complains, don't listen to him—yell at him.

Rule six: Treat every employee as if he were a potential troublemaker.

Rule seven: Get even with the complainers and find a way to make trouble for any employee chosen as a steward or spokesman for his fellow employees.

Rule eight: A very important one—give special favors to the good guys; that is to say, to the guys your supervisors personally like. You know—if there is a little extra overtime, treat it as a favor which your supervisor can dispense to a brother-in-law or just to the good guy who never causes any trouble.

Rule nine: Always act immediately, particularly if you are a little angry. Never wait until you cool off and can think clearly about the problem.

And rule ten: When in doubt, discharge. This one is a dandy.

Well, ten rules are enough for the first lesson in how to stimulate unionization and grievances. Now let me turn to another related topic. This one is designed particularly for those of you who already have union contracts. I call this topic "How to Foul Up the Grievance Machinery."

I would say the first and most important rule under this heading is this: *Don't confuse yourself with the facts.* At least be sure to wait until the grievance is well along in the grievance processing before you really research out the true facts of what gave rise to the grievance.

It was just a few weeks ago when I went out to New York to try an arbitration case which resulted from a company announcement that it was going to eliminate a classification in a particular department. The arbitrator had been selected and the date for the hearing set. I went out a day early to interview my witnesses and get the case ready for trial.

I first talked to the plant manager, who told me how silly this grievance was—that he knew perfectly well this classification could be eliminated and that he had had his industrial engineering department make a study which showed unquestionably that the job could be eliminated, so he had taken action to do so.

After talking with him, I talked to the industrial engineers. As some of you know, that's often had to do because they have a tendency to talk their own jargon. While they unquestionably serve a very valuable purpose in industry, they sometimes have difficulty in explaining to poor simpletons like lawyers and arbitrators exactly what they're doing and why. But in this case it didn't take me too long to learn that their study was based, as it had to be, on certain hypothetical projections and assumptions, because, of course, the job had never actually been run without the people who were now going to be eliminated from the department. And when I started to ask them about where they got the information for certain of their assumptions—as I knew the union attorney would be doing the next day at the hearing—I found that the basis for these assumptions were pretty shaky.

So I thought I had better call in the departmental supervisors and see whether the assumptions were valid. Nowhere along the grievance procedure had this been done or had these assumptions been checked out. Well, you can guess it, of course. The supervisors told me unanimously that certain of the key assumptions simply did not apply in this particular department. They had been projected on the basis of experiences in other departments, but they didn't fit this one. The supervisors also all told me that they didn't really see how they could operate without this classification and still maintain reasonable quality of product. Nobody had ever asked them this, either.

When I reported all this back to the plant manager he concluded, sensibly enough, that there was no point in going forward with the arbitration. I came back to Chicago, and the whole idea of eliminating the classification was dropped like a hot potato. Nobody, needless to say, was very happy with the whole situation, and the trouble was, of course, that no one had really dug into the facts

until we were right at the very brink of the arbitration hearing. Lots of people lost face who didn't need to: I was paid what the company doubtless regarded as a terribly wasteful price for traveling out to New York and spending my time finding out what the company people themselves should have found out many weeks before; and the union may well be left with the impression that all they need to do is push a grievance right up to the brink of arbitration and the company will fold.

But, in terms of my subject matter for today, all of this is beautiful because it really builds up the need for the services of fellows like myself.

Another way to administer the grievance machinery so as to produce lots of business for labor lawyers is this: *Always stand on principle.*

I don't know why it is that so many businessmen who pride themselves on approaching most of their business problems with an open mind and a great deal of flexibility of ideas as to how to get the job done, tend to approach labor relations problems with a quite different attitude. Instead of looking at a problem which may be raised by a particular grievance as one for which they should seek a solution, they so often look at it as one in which solutions are unimportant and standing on principle is extremely important.

This makes just about as much sense as it would in your relationships with your wife or with your family. If I were to tell you that you ought always to refuse to carry in a bag of groceries for your wife because you ought to stick to the principle that cooking and grocery shopping are her responsibility and earning a living is yours, I think you would tell me that I just didn't understand how a relationship between a man and his wife works; and yet I have had competent, intelligent businessmen tell me that even though discussing a particular problem with the union might result in their getting cooperation they simply won't do it because top management decisions are so sacred that as a matter of principle they must never discuss them with any union representative.

I saw a new plant manager in a company that I represent improve the operations of his plant and reduce costs to the point where the plant which had been losing a substantial amount of money became a highly successful and profitable facility. In the course of doing this he reduced the number of employees working in the plant by between 20% and 25% over a year's period. His success in accomplishing this with hardly a single grievance being filed was attributed by him, at least, to the fact that one of the first things he did after assessing the real problems in the plant was to sit down with the union representatives and explain the whole picture to them and to give them a pretty clear idea of exactly what had to be done if this plant was going to succeed instead of having to be closed. And at each step of the road, he told them what action he was going to take and why he was going to take it. I am not saying that he sought mutual agreement, but, rather, that he went about it in a cooperative, common-sense kind of way—just as you might do with your wife if it became necessary for you, because of personal circumstances, to cut down your standard of living. You wouldn't just cut off her checking account, but I think, instead, you would sit down and discuss with her how you were going to go about solving the problem.

Now I have seen many other situations in which similar drastic action was required in order to bring a plant around into the black, where the plant manager's attempts were met with union resistance in dozens of grievances all along the route; and when I have suggested that perhaps some discussion of the problem with the union might be helpful I have been told that this is totally a management problem, that it is simply a question of exercising management rights, and that principle demands that the union be kept entirely out of the picture. Well, this kind of course certainly makes business for labor lawyers. And in many similar areas when businessmen approach labor relations problems with a fixed idea about principles which have to be maintained rather than of problems which need to be solved, they may cause themselves a lot of trouble, but they certainly build up business for their labor counsel.

Still another rule with respect to grievance handling is this: Never give the employee or the union representative a chance to tell their story. *You* decide what the problem is and in any meeting with the employee or the union start out by getting *your* version of the situation in before giving anybody else a chance to talk.

In a small shop in Chicago the union filed a grievance to the effect that the company was not filling an open job in the shipping department. The foreman called in the steward after the grievance was filed and started right out by

giving the steward a lecture on company rights, including the right to leave a job vacant if it wanted to. This developed into a very heated argument. No settlement of the grievance was reached and it went on to the next step. The plant superintendent took exactly the same approach and the same sort of argument developed with the chief steward. Once again, no settlement was reached and the union demanded arbitration. It was at this point that the matter hit my desk.

I called the president of the company to arrange to come out to the plant to talk about getting the facts together in preparaion for the optential arbitration. He told me that he was not familiar with this grievance and that it seemed very peculiar to him that the union should want to take this to arbitration because there had been a number of other instances in which someone had quit or left and the company didn't find it necessary to fill the vacancy and the union had never complained. He said he would like to check the matter out a bit before we went any further. He called me back a couple of days later and told me that he had asked the chief steward to come in and explain this whole thing to him, and that he, the president, had done a lot of listening in the course of that conference. Before the chief steward got through, it became quite clear to the president that the problem had nothing to do with the company's failure to fill the open job at all.

It turned out that the job had become open as a result of promoting one of the fellows in the shipping department to foreman. The real gripe that the fellows had was that a sort of natural leader in the shipping department had been bypassed and had not received the promotion.

The steward was smart enough to know that he couldn't file a grievance about this, so he filed one on the company's failure to fill the resulting open job, hoping that it would give him the chance to at least tell the boss what the guys were saying. He never had that opportunity until the matter reached the president's desk.

When the president found out what the trouble was he explained to the steward that the man involved had been passed over because there was a lot of paperwork involved in this particular supervisory job and the man that the other fellows thought should have gotten the job simply wasn't qualified so far as his ability to handle the paperwork was concerned. He assured the steward that he knew that the man who had been passed over was very competent and was in fact a natural leader, and that the company would certainly keep their eye on him for promotion to a supervisory position which didn't involve so much desk work. When the steward passed this information along to the people he represented the grievance was dropped and no arbitration ever occurred.

In many, many cases, if your management people will be good listeners, they will find out that the problem isn't what it seems to be, and that the real problem can be solved. But if they take a preconceived notion of what the problem *appears* to be and start out their discussions by talking instead of listening, you're going to have a lot of unresolved grievances and probably a lot of arbitrations. Once again, this may not be so good for your company, but it certainly is nice for your lawyers.

There are a lot of other rules that I could mention, but I think I will content myself with just one more. And that is this: *Don't worry about the truth—just worry about winning the grievance.* Another way to put it might be—always pretend that you're right even if you know you're wrong. This is perhaps one of the best ways of preventing grievances from being settled. In a non-union shop it is a great way to treat employee complaints if what you really want to do is present a gilt-edged engraved invitation to a union to come in and represent your people.

A couple of years ago, I tried an arbitration case over in Oklahoma where the question up for decision involved the selection by the employer of a man for promotion to the job of sample tester. Two employees had bid for the job, one of whom was substantially more senior than the other. The company had selected the junior man. The contract was written in such a way that the company had the right to select a junior employee in preference to a senior one if the senior man could not perform the duties of the job "without additional training" but the junior man could.

When I talked to the supervisor who had made the decision and was preparing him as a witness, he told me that the union's claim was that the senior man could

do the job without additional training because he had held that job at some time in the past. The supervisor insisted, however, that it had been a couple of years since the man had performed the work and that there had been a lot of changes in the testing procedure since that time. The junior man, on the other hand, had been working in the department involved for the last couple of years and knew all about these changed procedures, so that he would be able to perform it "without additional training."

Well, this sounded pretty good and I spent considerable time preparing the supervisor to testify. In the course of his testimony he described in detail all the changes which had been made in the testing procedure during the last two years and I thought did a pretty good job of showing that the senior man would not be familiar with all of these changes and thefefore was not capable or performing the work "without additional training." The union representative cross-examined the supervisor concerning the subject matter of my direct examination. He went through each change and tried to get the supervisor to say that the changes had not been substantial, but he didn't succeed very well. In fact, my supervisor really stood up very well throughout the entire cross-examination by the union representative.

Then, as sometimes happens, the arbitrator said that he'd like to ask just one or two clarifying questions before closing the hearing. He turned to the supervisor and asked him whether a man with some previous experience with sample testing in general could have the changes in procedure explained to him in a half hour or so and as a result be able to perform the testing work without any further training. I sat back confidently expecting the witness to say "Of course not" and perhaps to explain why. Instead, my supervisor answered "Well, that would depend on the man."

I don't know whether the truth of the situation hits you as clearly as it did both the arbitrator and me at that point in the hearing. But let me tell you that it took only one or two more pertinent questions from the arbitrator to establish that the real truth of the matter was that the supervisor personally liked the junior man better than the senior one, but that his decision really had nothing at all to do with the only relevant contractual test—that is, whether the job could in fact be performed by the senior man and without his having to receive additional training.

But right up until the close of this arbitration case the supervisor had never admitted this, either to any of his supervisors or to me when I was preparing the arbitration case. Maybe he hadn't even admitted it to himself, but I think he had—and had simply decided to cover up the truth hoping that he could pull the wool over the eyes of the union and eventually over the eyes of an arbitrator. Needless to say, it didn't work.

Any time you or one of your members of supervision gets in the habit of trying to cover up the truth and always pretend that you are right whether you are or not, you're not going to settle grievances and youre going to create a bad relationship with your union—or if you don't have a union then you will create a bad relationship with your work force and provide ready ammunition for a union organizing campaign.

Now, of course, unions and employees sometimes make the same mistake.

I tried a discharge case in southwestern Illinois where an employee had been discharged for coming to work in an intoxicated condition. I put on three or four company witnesses, each of whom testified that they had seen the man on the night in question and that he really was roaring drunk. They testified that his face was flushed, his eyes bleary, that his speech was slurred, and that the staggered when he walked. The Union put on at least an equal number of witnesses, each of whom testified that the man was sober as a judge. They testified that he walked a perfectly straight line, and he stopped up and over a fairly high conveyor belt without difficulty, and that he showed no sign of having been drinking to excess. The man himself testified that his fact may have appeared flushed and his eyes bleary because he had driven a motorcycle to work and had driven it several miles on a cold, windy night which caused his face to get red and that he had forgotten his goggles so that his eyes may have appeared to have been in an abnormal condition.

When all of the testimony was in I wouldn't have bet a nickel one way or the other as to which way the arbitrator would decide. The stories had been exactly the opposite. All witnesses had held up well under cross-examination

and I remember thinking that the arbitrator was going to have one devil of a time trying to decide who was telling the truth and who was lying. In fact, I had almost begun to wonder myself.

Then, just before closing the hearing, the arbitrator turned to the man who had been discharged and told him that he thought he had heard all of the relevant testimony but he never liked to close a discharge case without asking the man involved if he had anything in particular that he wanted to say for himself which he hadn't had the opportunity to say when he was being questioned by the lawyers for the parties in the course of the hearing. So he asked the man if there was anything further he would like to say.

The brievant looked pensive for about thirty seconds and then he said, "Well, I think the whole trouble here was that when you've got a foreman who doesn't drink, he just doesn't understand the problems of a drinking man."

The union attorney's jaw dropped about a foot, a knowing look came into the arbitrator's eyes, and I couldn't help smiling. Everybody knew at that point how the case would come out. And I don't need to tell you that the faces of the union witnesses, who had decided to lie to try to save their buddy's skin, were pretty red.

But my point is simply this. If either the company or the union or the employees decide that grievance processing is just fun and games and that the idea is to try to win whether the truth is on your side or not, the relationship between the company and the union or between the company and its employees is going to be a strained one and the result, to stick to my text, is likely to be a bonanza for the labor lawyers.

Well, those are some of the rules that I hope you all follow. Now you know how to stimulate grievances, you know how to stimulate unionization, and you know something about how to foul up your grievance procedure. But when giving a lesson like this, I think it is customary to end up by giving a horrible example of what happens if you don't follow the rules. So let me conclude with this one.

I have one client of whom I am very fond, but he's really a lousy client. He calls me every once in a while and says he wants my advice. He gives me the facts of a particular grievance which he has on his desk. After telling me about the grievance he asks me whether under the contract I think the grievance should be granted or denied. When I have finished looking at the facts and the contract and tell him that I think the contract would sustain his position and enable him to deny the grievance, he always listens with interest and then he asks: "OK, Ed, that's what the contract says. Now what do you think is the fairest thing to do?"

Now there is really a lousy client. I can't remember when he's had an arbitration case and somehow or another his negotiations always seem to go smoothly. Now I ask you—how could a labor lawyer make any money on a client like that?

And I have one more horrible example for you. This is also a true story and it also involves another client for whom I rarely have to try an arbitration and who very seldom needs my help in negotiations. Over a cocktail one day he said this: "You know, I make it a practice to treat all of my employees, including the union representative, as gentlemen. I am inclined to give them the benefit of the doubt and always act on the basis that if I treat them fairly they are going to treat me fairly."

Then he paused, and a minute later he went on: "You know, every once in a while some s.o.b. comes along and takes advantage of me. Then I think, at first, that maybe I've been wrong, but ultimately I say to myself—No sir, that's just the Lord tempting me."

If that kind of an attitude were ever really allowed to spread, I'm afraid there would be precious little business left in this world for labor lawyers.

Thank you.

Senator JAVITS. I put this in the record, because I like very much the attitude displayed by a management lawyer who is advising other lawyers and the clients, or potential clients, that the best way to practice law in the labor field is to discourage litigation and to discourage controversy, and giving very intelligent and common sense ground rules as to how this can be done on the basis of what is obviously vast practical experience.

Mr. Miller, I would first like to ask you a question about your own philosophy. How do you you put the area of labor-management relations as a factor in the operations of the American society?

Where do you rank it?

STATEMENT OF E. B. MILLER, MEMBER-DESIGNATE, THE NATIONAL LABOR RELATIONS BOARD

Mr. MILLER. Well, I think then it ranks very high, Senator. It is certain that the continued well-being of this Nation is dependent upon material aspects, the successful production of goods, and in order for there to be a successful production of goods, certainly there must be harmonious relations between employers and employees, and the representatives of the employees.

Senator JAVITS. Do you consider coercion—so many have recommended prosecutions under the anti-trust laws and various other types of prosecutions—to be more or less effective than the greatest facilitation of voluntary collective bargaining?

Mr. MILLER. Certainly, I would have every hope, and I would think, thus far at least, a reasonably justifiable belief that voluntarism is the best solution to all these problems.

Senator JAVITS. Would you hope to encourage—as a member of the Board—the least, rather than the most litigation by the utilization of the prestige and authority of your office to avoid as much litigation, even hearings, even board proceedings, as humanly possible?

Mr. MILLER. I certainly would, and in fairness to the present Board, I think a great number of cases are disposed of at the regional level without litigation.

I hope that would continue.

Senator JAVITS. The one thing said against you, and that is not in this record, but it has been said publicly, that you are a lawyer for management, a member of a distinguished firm representing employers in a number of major industries, and that this may give you an outlook which will inhibit the quasi-judicial concept which you must have in your role as chairman of the NLRB.

Do you mind facing that frankly and telling us how you feel about it?

Mr. MILLER. Not at all. I simply disagree rather strongly with that position. I think any of us who understand the function of advocacy recognize that in the private sector any of us who are attorneys are in the course of our practice speaking for one side or the other.

I think the man who has some basic sense of fairness and some personal integrity approaches a public position with a totally different point of view. He is no longer an advocate. He is now a decision-maker and there is a substantial difference.

It will be my hope that the experience in the field representing, in my case, one side, would add some practical knowledge and experience, but I don't see why it should affect one's judgment or one's basic integrity.

Senator JAVITS. Out of the profoundest good conscience do you feel you can rule with absolute, clear-eyed fairness with respect to any laboring man or trade union?

Mr. MILLER. I certainly will try to, and I believe that I can, Senator.

Senator JAVITS. We have had a very interesting report recently by one of our subcommittees of the Judiciary Committee, which has been highly critical of the Board as being excessively prolabor.

Obviously, this would develop on a case-by-case basis, and one must judge you on your record and on your appearance before us, and otherwise publicly, but there are two suggestions which are made in this record which I think you could have an opinion about without compromising your role in the future, hopefully, after your confirmation.

One of them relates to the use, as far as possible, of rulemaking in respect to NLRB proceedings. Would you give us some aspect of your point of view on that subject?

Mr. MILLER. I would be happy to. As that report points out, the Board has not seen fit to utilize its rulemaking powers. The matter has been a subject of considerable study and controversy by many groups, including this particular report.

It seems to me that there have been and probably will be appropriate cases for the use of the rulemaking functions. I would think that would be primarily, Senator, in the area of rules affecting the conduct of labor board elections.

I do think that Mr. McCulloch is correct in his statement that on the complaint cases, the cases or complaints on the violations of the law, those really have to be decided on a case by case basis, and I think that was the intention in creating the Board, that it would act in that fashion.

I do think, however, that rules such as the one currently in effect that speeches cannot be made by an employer on company time and property and within 24 hours of an election, I see no reason why that could not have been, and should not have been, accomplished through the rulemaking processes rather than through an announcement as a rule in the course of a decision.

Senator JAVITS. The other question raised by the report is the possibility of a biennial conference with the appropriate congressional committees, so that there may be some communion between the committee and the Board, between the Board and the congressional committees.

I would like to point out to you that that is not unusual. When I was on the Banking and Currency Committee, we always had an annual meeting with the Federal Reserve Board.

The Joint Economic Committee has regular hearings with the whole Council of Economic Advisors, and so on.

Could you give us your view on that?

Mr. MILLER. I would like to think, Senator, that we could establish, if the Senate should see fit to confirm my nomination, the kind of effective communications on a rather regular basis between the Board and this committee and the appropriate committee in the House, so that the need which gave rise to that recommendation would not arise.

I recognize, however, that just from my experience in having tried to see you gentlemen in the course of the time which has elapsed between my nomination and now, the pressure of business on Senators and Representatives is very heavy, and perhaps there is not as much

time for this kind of communication as I would like to think there is, and I may find that is true in my job also.

If that does not work out, and I am realistic enough to recognize that it may not, I would certainly welcome the kind of conference suggested in that report.

Senator JAVITS. Assuming the strength of the country lies in the basic productivity of goods and services in matters which are, generally speaking, substantively important to the upbuilding of the country, do you feel that the operations of the Board can be improved in terms of making collective bargaining even more effective, to be translated into goods and services which represent the growth and strength of America?

Mr. MILLER. I think with respect to any agency, Senator, there is always room for improvement. I think there is room for improvement here. I am concerned about a number of things that I do think need attention, particularly the lapse of time that sometimes now occurs between commencement of a case before the Board and its final determination.

You gentlemen of the Congress, have something to do with that, too, in terms of appropriations to give us sufficient funds so that we can do the job, but I would hope that administratively some changes will be made which will bring about a more effective operation of the Board.

Senator JAVITS. Have you had a number of cases before the Board as a lawyer?

Mr. MILLER. I have had a number. In the practice of labor law, we find ourselves operating in a number of fronts, wage-hour, contracts, et cetera.

The Board is only one area of our operations, and I cannot say that I have had several hundred cases before the board, but I have had a number.

Senator JAVITS. How many would you say you have had before the Board in the last 10 years?

Mr. MILLER. Forty or fifty.

Senator JAVITS. You have been involved in cases before the Board?

Mr. MILLER. In oral argument before the trial examiners. Oral argument at a national level rarely occurs.

Senator JAVITS. Would you characterize yourself as a practiced pracitioner before the Board?

Mr. MILLER. I would.

Senator JAVITS. We are trying to appoint judges with trial experience in the courts, and I see no reason why we should not follow that standard here.

You have submitted a list of your security holdings; it does not evidence that you are man of great wealth, but you are comfortable.

It shows an aggregate net worth—do you mind this being spread on the record?

Mr. MILLER. No, sir.

Senator JAVITS. Of roughly $300,000. In many of these companies you have modest amounts of securities. You have no individual holdings exceeding $27,000 in market price. You have small holdings—$10,000, $14,000, $15,000—but they are large companies, and they may

very well—it is almost a standard investment list that you submitted—they may very well have cases before the Board.

I gather you thought about this, and that you have some ideas about what you would like to do yourself. Would you tell us what you would like to do?

Mr. MILLER. Yes, Senator, and at some appropriate point, I would like to incorporate my statement into the record.

Senator JAVITS. We would put it in the record here.

Mr. MILLER. I would be happy to. I would like to read a portion of this.

The CHAIRMAN. Mr. Miller has a statement. We generally call upon him for a statement immediately after my opening statement, but due to the fact Senator Percy was here, this normal procedure was disrupted, and I would like you to read the statement.

Senator JAVITS. Mr. Chairman, I will have no further questions.

Mr. MILLER. It is, of course, a great honor to have been nominated for this post by the President of the United States. I also appreciate the opportunity to appear before this committee, and I would like to thank many of you for the opportunity which you afforded me to visit briefly with you in your offices during the weeks which have intervened between the date of nomination and the date of this hearing.

While I do not wish to take up your time with any extended statement, I think there is one area as to which the facts should appear of record so that there may be no misunderstanding.

I am talking about the area of ethical conduct which the Congress and the public are, rightly, always concerned with.

Because the position for which I have been nominated is a quasi-judicial position and is national in scope, I should like to state for the record the actions which have been taken which I believe will obviate any potential conflicts of interest, or even any appearance of such conflicts.

If and when the Senate confirms my appointment, all connections between myself and the law firm of which I have been a partner will be totally severed. I have provided Mr. Harris, Staff Director for this committee, with a copy of the letter which I received from the executive committee of my firm and which details the definitely terminal arrangements which will become effective upon confirmation.

Despite that consequence of severance, I have advised my law firm that I will disqualify myself from acting on any board matter pending at the time of my confirmation in which any party is represented by any attorney in that firm.

It is my further intent to disqualify myself in any case in which a party is a client with whom I personally have been closely associated through having represented that client on a regular basis during the recent years of my practice.

There are approximately 20 corporations which fall in this cateory. category.

Senator JAVITS. Are you listing those?

Mr. MILLER. No; I have a list if you wish it, Senator.

Senator JAVITS. I think you should furnish that.

Mr. MILLER. I have it.

(The material referred to follows:)

LIST OF LABOR RELATIONS CLIENTS OF E. B. MILLER

1. Andes Candles, Inc.
2. Armored Express Company
3. The Boye Needle Company
4. Chicago Wheel & Mfg. Company
5. Continental Can Company, Inc.
6. Dearborn Glass Company, Inc.
7. The Hy-Dynamic Co.
8. Midwest Carbide Company
9. Movers Association of Greater Chicago
10. The Orchestral Association (Chicago, Illinois)
11. Perfection Tool & Metal Heat Treating Company
12. Power Systems, Inc.
13. Standard Killsman Industries Inc.
14. Warnaco (Bridgeport, Connecticut)
15. Bergstrom Paper Company (Neenah, Wisconsin)
16. Chemetron Corporation
17. Hammond Corporation
18. Cherry-Burrell Corporation
19. E. D. Etnyre & Co.

Mr. MILLER. Lastly, I am placing all of the shares of stock which I own—none of which represent anything even approaching a controlling interest in any company—into a blind trust for the duration of my term of public office.

That trust is patterned after the one which Secretary of Labor Shultz executed upon assuming his present position. I believe the Sevretary's trust agreement was reviewed by this committee and found to be adequate protection against any possible conflict of interest which might arise out of the ownership of any financial interest in a corporation whose interests might be affected by his action in public office.

I would therefore assume that you gentlemen will find it satisfactory in my case.

Thank you for allowing me the time to clarify these matters. I have no further statement to make at this time, but I will, of course, be pleased to answer any questions, which any of you may have.

I am sure you understand, however, that in view of the quasi-judicial nature of the position I would not believe it proper to make any statements which might be construed as prejuding any possible set of facts, which might, during my term of office, come before the Board for determination.

Thank you.

Senator JAVITS. Mr. Miller, just one question.

I said I would ask no more, but this one is brought on by this statement of your holdings; do you think you ought to agree for any period of time to disqualify yourself from sitting in a case which involves any company in which at this time you have an investment, we will say for the sake of argument, exceeding $10,000, on the theory that the blind trust will begin to turn over in terms of investment, perhaps a little later on?

Frankly, I would not ask for it, and I don't but I am putting it up to you as a man of conscience and a lawyer.

How do you feel about it in your heart?

Mr. MILLER. It would seem to me quite frankly, Senator, that once having put these securities in a blind trust, that I will have no idea on

the day following the day that I do that whether any given security remains in that trust or not, and I think that, in my view, is the key item.

I don't see how there can be a conflict when I don't know whether I have the security, and I would not think in my own mind that a period of disqualification is essential.

Senator JAVITS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Pell?

Senator PELL. Following up the thought that Senator Javits mentioned, I think we sometimes tend to go overboard in thinking that because a man has invested $15,000 in a company which has a net worth of half a billion that that will really affect his judgment, and I for one think that a rule of reason has to apply here as well.

Mr. Chairman, there is an excellent biographical sketch of the nominee from the New York Times. Has this been put in the record?

The CHAIRMAN. Yes.

Senator PELL. There is a particular place in it which I think is the nub of the matter. Apparently a rival of Mr. Miller's for the job stated that "The Government should not be recruiting judges directly out of management practice," and "no labor lawyer has ever been appointed to that Board."

First, I would like the staff to inform me as to whether a labor lawyer has ever been appointed to the NLRB?

They have not. Have any management lawyers been appointed to the Board? Two have.

Mr. MILLER. It is more extensive, I believe, Senator. I did a little research on that myself because of the statement that was made, because it was suggested that the idea of appointing anybody to the Board who had any specific experience on one side or the other was a novel one, and sort of essentially Republican.

In my checking, it seems to not be true. I would point out that one of the earliest Board members appointed to the pre-Wagner Act board in 1934 had represented management in personnel and labor relations problems for many years in the course of his pre-Board career.

I could go down the list. I don't recall whether anyone who had represented labor interests at the time was appointed to the board. It is true, however, that there was a 1952 appointee who left the Board after 4 years to enter private practice to represent labor organizations and subsequently became general counsel to a labor organization.

So I don't think anyone having had experience either before or after, is novel.

Senator PELL. No. I ask the staff to insert in the record at this point the names of those attorneys who served in either of those capacities, based on what they did before they were appointed, not what they did after.

(The names referred to follow:)

Chairman: Guy Farmer; member: Joseph A. Jenkins.

Senator PELL. I think it would be difficult not to have some experience in the field.

Our job here is to make sure that the NLRB is fair, and not biased in either direction, but if a man's main practice has been in labor law

either on the side of labor or management, it would seem to me that he would bring with him a certain viewpoint.

How much of your practice has been in labor-management relations?

Is it a half of your practice, or one-tenth, or what would you say?

Mr. MILLER. It has ranged from, in a given year, from 75 to 100 percent, exclusively labor practice.

Senator PELL. Have you ever represented labor organizations?

Mr. MILLER. No, I have not, because we felt a conflict of interest would be created in the firm, that if we accept a labor representation that we would find ourselves representing a case in which we represented the other side.

Senator PELL. I don't mean to imply guilt by association, but if 75 percent of your professional work is representing one viewpoint, I would think it would build in over the course of years a certain leaning in that direction.

You would have to have a very tough intellectual soul to be able to avoid a certain bias. I have been in the Senate for 10 years representing Rhode Island, and I have a bias toward Rhode Island.

The CHAIRMAN. May I recommend to the Senator that he advertise that very loudly in his home State?

Senator PELL. I appreciate the voice of experience.

Mr. MILLER. I would hope that is not true, Senator. We certainly had one or two public officers, including an appointment as Secretary of Labor, of people who have been advocates of a particular side, and yet they have been entrusted with positions of public responsibility.

I don't know how I can convince you or anyone else that I don't have a bias, except to say I would be fair.

I am concerned, and I think the administration is concerned, that the present Board has had a deficiency by not having anyone on it who has had direct practical experience in the field.

I believe Senator Percy pointed out this morning, if you are going to get someone who has had direct practical experience in the field, he is going to have worked I think, for one side or the other.

Senator PELL. I wonder if the administration would make a firm commitment that the next man to be appointed to the Board would be a labor lawyer.

Mr. MILLER. Since I will not be responsible for that appointment you had better ask someone besides myself, sir.

Senator PELL. I have no objection to you. You seem to be a fine man with a fine background, but I have qualms whether you can spend many years working in a field and not acquire a sympathy for the viewpoint you represent.

I don't think it necessarily applies in criminal law, but I think it would in this kind. I am not a lawyer, but I just feel that way.

Mr. MILLER. Speaking seriously, when you talk about criminal law or any other phase of the law, I suppose we appoint judges who have had experience specializing in representing one particular segment of society and we don't seem to be too concerned about that.

Senator PELL. No. I just finished reading the "Godfather" and this gives me those thoughts. You are a very fine man, nevertheless I have qualms that no matter how objective you want to be, you would have bias. I am not sure this is the right job for a man of your very distinguished background.

The CHAIRMAN. Senator Eagleton?

Senator EAGLETON. Mr. Miller, of your own knowledge, what had been the private practice of Arthur Goldberg before he went on the Supreme Court?

Also, he was Secretary of Labor, but what was his practice as a private practitioner?

Mr. MILLER. So far as I know, it was confined to representing the labor side of the controversy.

Senator EAGLETON. Was he not general counsel to a large union?

Mr. MILLER. He was.

Senator EAGLETON. Was he opposed by the AFL–CIO?

Mr. MILLER. I don't believe so.

Senator EAGLETON. So his prior experience did not keep him off the Nation's highest court.

Mr. MILLER. No.

Senator EAGLETON. I think it was wrong to say one should be absolutely barred from holding a position because his experience is in the field relating to that position. We went through the episode of not wanting unqualified people in high judicial positions.

Yours is in the nature of a quasi-judicial position, and I don't think you should be barred from consideration for that position because you have experience in the field in which you will serve, so long as you have taken all necessary steps to avoid any possibility of a conflict of interest.

That is my own personal view.

Mr. MILLER. Thank you, sir.

Senator EAGLETON. Now, as to your blind trust, I am not very sanguine about blind trusts, but that seems to be the way to do things, so that may be all right, too.

I don't know what your holdings are, but if they are anything like mine, it will be a broke trust soon.

They will soon all be below that.

I am pleased to see one sentence in your statement, because you had not made up your mind on this point when you were in my office. You stated:

> It is my further intent to disqualify myself in any case in which a party is a client with whom I have been closely associated through having represented that client on a regular basis during the recent years of my practice. There are approximately 20 corporations which fall in this category.

I think Senator Javits has already asked that you supply us, and that it be made part of the record, the list of these 20 odd corporations, so that everyone knows these are the ones you have been closely identified with on a rather continuing basis in recent years.

You have talked to the personnel managers, their labor relations vice presidents, or whoever they are, and you have had a rather close working relationship with these corporations, and hence when you came to see me, I said, at least as one man's opinion, that such a continuing close relationship with the individuals in these corporations would put you in an awkward spot if the question of credibility of testimony, et cetera, came along, and in my own judgment it was better that you consider disqualifying yourself in advance so that no shadow of doubt could be raised, and I am very pleased that you have so done.

Mr. MILLER. Yes, as you will recall, I discussed various means of protecting the ethical interests and after thinking about it I decided this was the proper course.

Senator EAGLETON. It may be that the canons of judicial or legal ethics do not require you to do what you are doing here, but I think in this day and age it is far better to bend over backwards so that there are no doubts whatever.

Finally, let me say, Mr. Miller, that from everything I have heard and read about you, you are an eminently respected practitioner in the field of labor law, and I think people knowledgeable in their fields ought to be on agencies that deal with that.

I take the opposite view of some who think we ought to put an intellectual cipher, a minibrain, on some boards and agencies, so I am glad you have some experience.

Mr. MILLER. Thank you very much.

The CHAIRMAN. I order printed in the record at this point the letter from the Pope, Ballard, Kennedy, Shepard, & Fowle firm of Chicago, the letter of March 6, 1970, addressed to Mr. Miller, giving the specific terms of his withdrawal from the firm and severing his final interest in the firm, if, and when he is confirmed.

(The document referred to follows:)

POPE, BALLARD, KENNEDY, SHEPARD & FOWLE,
Chicago, Ill., March 6, 1970.

EDWARD B. MILLER, Esq.
Pope, Ballard, Kennedy, Shepard & Fowle,
Chicago, Ill.

DEAR ED: The Executive Committee has considered the matter of your intention to terminate your relationship with this firm at such time as the Senate confirms your appointment as a member of the National Labor Relations Board. Effective immediately upon such confirmation, the firm will take the following action with respect to your partnership:

1. You have tendered to us your resignation as a partner effective as of the date of confirmation. That resignation will be immediately and unconditionally accepted as soon as confirmation occurs.

2. In implementation of the total termination of your relationship with us, we shall immediately discontinue accrual of any further earnings from this firm, again effective as of the date of confirmation.

3. Inasmuch as you participate as a partner in the year-end distribution of net undistributed earnings, we will pay you, in cash, immediately upon your confirmation, an amount in lieu of such a year-end distribution for the calendar year 1970, said amount being determined by assuming that our earnings and your share therein for 1970 would be the same as they were in the year ending December 31, 1969. Payment to you would be made in an amount prorated in proportion to your active association with us up to the date of your confirmation. Thus, for example, if your confirmation were to occur on March 31, you would receive three-twelfths (one-fourth) of your total 1969 earnings minus, of course, the amount which you have received as drawing account in 1970.

4. The amount of your capital interest in the firm would be immediately distributed to you upon confirmation.

5. Your participation in our Pension Plan would be immediately terminated and any amounts called for under that Plan to be distributed out of the trust to a severed employee or partner would be payable to you in accordance with the terms of the trust.

6. Inasmuch as you will have taken one week's paid vacation, no further vacation payment would be made to you in view of the limited number of months which you will have been associated with us in this calendar year.

7. You will be expected to make immediate settlement with our Bookkeeping Department with respect to any cash advances or personal items which have been

paid on your behalf and which may not yet have been refunded by you to the firm.

8. Your group insurance coverage would be terminated in the manner specified in the various policies for discontinuing coverage for terminated partners or employees.

We also wish to confirm our understanding with you that no commitment has been made by you or by the firm with respect to any possible future association with this firm in the event that at some future date your employment by the government should terminate.

You have been provided with a list of matters which clients of this firm presently have pending before the National Labor Relations Board and you have informed us that you will disqualify yourself from acting on any of such cases.

We have also instructed all of the partners and all of our associate attorneys that none of them is to discuss any such pending cases with you and, further, that at no time during your tenure with the Board shall any associate or partner of this firm discuss with you any matter which may in the future be pending before the Board on behalf of any of our cilents. While the association between you and our firm will be definitely severed, we nevertheless feel that any inference of any attempt by any of us to abuse our personal friendship with you in an improper manner should be scrupulously avoided.

All of us wish you well in your new undertaking, and we are sure that you will understand that the steps we are taking, as outlined in this letter, are necessitated by legal and ethical codes of conduct which we believe it important to observe in letter and in spirit.

Yours very truly,

By W. McNeil Kennedy,
On behalf of the Executive Committee.

The Chairman. Mr. Miller, this list, of course, of your financial holdings was submitted to me as chairman and the ranking minority member of the committee. Any other member has a right to look at this, and ask any questions.

Senator Eagleton. Mr. Chairman, I don't want to make public the stocks he has. I do think I will ask Senator Javits, if I may: Don't you think it would be better with respect to those corporations, the 20-odd mentioned, that they be made part of the public record in advance?

Senator Javits. He is doing it.

Senator Eagleton. Very good.

The Chairman. As one who practiced law for 20 years, I would think a man would have more interest in a client he represented than if he never represented them.

Senator Javits said these total holdings are worth about $300,000. In the statement I have here, it shows $325,000. My statement must be about 2 days old. [Laughter.]

Mr. Miller. You are so right.

The Chairman. As I have said, we customarily, of course, never disclose what holdings are, but there is one item that arouses my curiosity, I ask leave to discuss that.

That is two shares in the Clintonville Cooperative current price 12 and a half, value $25.

I am constrained to ask you what is the Clintonville Cooperative.

Mr. Miller. It is like a number of the cooperatives that you are familiar with, that exist in smaller communities and it operates a grain elevator, and also carries on some small commrecial retail business.

The Chairman. A rural, farm type cooperative?

Mr. MILLER. Yes, but sort of a mini conglommerate. I think they also sell fuel oil.

The CHAIRMAN. That is an interesting combiantion, to be a two-shareholder in that.

Mr. MILLER. That was inherited from my father, who lived in that city.

The CHAIRMAN. Mr. Miller, you stated you intended to disqualify yourself from sitting on cases where you have a financial interest in one of the parties to the case.

Now this list of stocks—as stated by Senator Javits—is not large in any one company. A matter of $10,000 was mentioned, where you own as much as $10,000 worth of stock in a company, it seems to me that you should disqualify yourself, say, for the first year.

Would that be satisfactory to you? Once this is put in a blind trust, you would know immediately what you had in any one company, but after a year, you would not know what happened to it.

That question has been discussed with other Senators before the hearing, whether you would be willing to disqualify yourself on these in which you hold stock. But so many of them are so small that I think we could adopt a $10,000 rule here.

Mr. MILLER. I hesitate to disagree with you, Senator, but it seems to me I don't know any more whether that block would be there tomorrow than I do a year from now, I don't understand, therefore, the rationale behind your suggestion.

The CHAIRMAN. The likelihood would be that they would not sell on a falling market.

Mr. MILLER. I don't know. It could be a shift of investments immediately, depending on the trustee.

The CHAIRMAN. Mr. Janeway recommended on nationwide television yesterday morning, sell stocks and buy bonds.

Mr. MILLER. Even that. The trustee will have full discretion under the agreement to invest in any security.

The CHAIRMAN. What is your answer?

I have discussed this with some other Senators, and some wanted that asked. What would be your attitude toward sitting in these cases, say, for the first year, where you have over $10,000 worth of stock at current values.

Would you be willing to disqualify yourself for the first year?

Mr. MILLER. Let me put it this way, Senator. I would prefer not to. I don't think it is a particularly rational requirement. If that were the consensus of this committee, I would be willing to abide by the committee's rules.

Senator JAVITS. If the Chairman would yield, I would hope you would adopt the committee's desire. We will discuss it. There is no impugning of your integrity.

The CHAIRMAN. No, that is no impugning of you whatsoever. We have to have a full committee meeting. We can't get the quorum this week. We have talked among ourselves here. We have an executive session tomorrow.

It seems the first time we can be sure of a quorum is about the middle of next week. If you prefer not to agree to that and leave it up to the

committee, we will discuss this in the committee. You will abide by the committee's findings then?

Mr. MILLER. I certainly will.

Senator JAVITS. So if the committee sets that as a condition, we would assume your answer is yes.

(The following communication was subsequently received for the record:)

POPE, BALLARD, KENNEDY, SHEPARD & FOWLE,
Chicago, Ill., May 13, 1970.

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

DEAR SENATOR YARBOROUGH: I was of course pleased to have learned, this morning, of the action of your Committee with respect to my nomination. I understand that the recommendation is contingent upon my abiding by your rule, as I indicated I would be willing to do at the hearing, to the effect that I will disqualify myself with respect to cases involving any company in which I own a stock interest having a value of $10,000 or more. In the telephone discussion with you and Senator Javits' assistant this morning, we agreed that we would utilize values as of the close of the market yesterday. It was also my understanding from this conversation that I could reduce my holdings in any such company below the $10,000 level prior to the date of Senate action and thereby remove the necessity of disqualification with respect to companies in which I have reduced my holdings to less than $10,000.

In reviewing my list of securities today, I find that, as of the close of the market yesterday, I had in excess of a $10,000 interest in only the following securities:

1. Briggs & Stratton Corp.
2. E. I. DuPont de Nemours & Co.
3. Mayflower Investors, Inc.
4. Mobil Oil Corp.
5. Standard Oil of California
6. Standard Oil of New Jersey

I have today placed a sell order at the market for 200 shares of Briggs & Stratton, 100 shares of Mobil Oil, and 100 shares of Standard Oil of New Jersey. These sales will reduce the value of my holdings in these three companies below the $10,000 limit.

As a result, the disqualification rule will apply only to E. I. DuPont de Nemours & Co., Mayflower Investors, Inc., and Standard Oil of California.

I enjoyed meeting you last week and appreciate your having scheduled the executive sessions so promptly after the hearings. As I indicated to you during our personal conversation, a death here in my firm made it particularly important for me to know as soon as possible whether or not I would be leaving. Your cooperation in making this possible has indeed been very helpful.

I am sending a copy of this letter to Mr. Javits for his information, and I also wish to convey my very deep appreciation for his assistance in connection with my nomination.

Yours very truly,

E. B. MILLER.

Mr. MILLER. Yes.

The CHAIRMAN. Mr. Miller, I have been curious at some of the matters brought out by Senators Pell and Eagleton, and having been a practicing lawyer for over 20 years, and that practice was a general trial practice, not limited to any one type.

Some were personal injury, some were wills, and some were land law, but for lawyers in my State—and most States—who specialize there are certain plantiff firms and defense firms.

But there are certain other firms that represent plaintiffs and defendants. Do you know any attorneys in this field of management labor law who represent both management and labor?

Mr. MILLER. There are a few, but not every firm adopts the policy which our firm adopted. We felt there was too likely to be a conflict of interest.

I think particularly in a smaller firm, or perhaps if you have only one or two men, the likelihood of conflict, of course, becomes less.

As you get a broader practice, the greater likelihood there is. So we adopted that rule in our firm.

The CHAIRMAN. Nearly all the labor law is by larger firms, representing both labor and management. They are generally totally one side or the other?

Mr. MILLER. Generally, I believe that is true; yes.

The CHAIRMAN. Mr. Miller, what is your attitude toward the bills that are pending in the Congress, and there have been numerous ones introduced over the years, to abolish the NLRB and create a labor court?

Mr. MILLER. Well, I think that on the whole, the NLRB has been a viable agency. I would like to see it improved. I then would like to see it improved administratively. I would hope you gentlemen would keep your eye on us, and give us help sometimes when we seek to have changes made which may effectuate improvements in our procedures, or in the manner which we go about enforcing our orders.

But I am not of the belief that the Board needs to be abolished. Actually, a great many of the proposals for a labor court, when you get through examining them carefully, tend to have created really a revision which is essentially the labor board under a new name.

I am not sure that is worth all that trouble. Why not work to improve the present Board?

It is true that there has been a good deal of criticism of the Board, criticism from various sides and at various times in its dealing with controversial areas, and I have been concerned, and I am sure the Board has been concerned, and people now on the Board are concerned, with the image that that Board has created.

If, by changing the format so as to call it a court and to perhaps provide longer tenure for members or something of this character, it can be better accepted as a totally impartial agency or court, this might be worth a look but I also think one must be very careful in examining those proposals before us, because some of them that I have looked at would, I think, have slowed down the Board's processes, which are already too slow.

For example, you don't want the work of the Board in the district courts. I don't think they could handle it.

I am not being too evasive in my answers, but it is a question that deserves some study.

The CHAIRMAN. You mentioned the Federal district courts. There are bills pending to remove cases involving unfair labor practices, and giving that jurisdiction to the Federal district courts.

I think you have already answered that.

Mr. MILLER. I would prefer not to see that done, on the grounds that I don't see how the district courts could handle the case load. There is a tremendous volume of those cases that are settled or disposed of. To throw that volume of settlement case load, if you choose, on the

district attorney would also, I think, create an intolerable case load situation.

The CHAIRMAN. And you would lose with that a lot of the expertise of the staff of the NLRB built up over the years, would you not?

Mr. MILLER. I think that is true, unless you make provisions in the bill for the existence of a staff with this expertise. Otherwise, I think you would have a problem.

The CHAIRMAN. Are there any further questions, Senator Pell?

Senator PELL. No questions.

The CHAIRMAN. With reference to your answer to the labor court question which was not entirely one way or the other, black or white, but I assume you would agree with Winston Churchill, that if you assumed the chairmanship of this, you would not assume the chairmanship with the purpose of liquidating this.

Mr. MILLER. That is correct.

The CHAIRMAN. This hearing is recessed until tomorrow.

Mr. MILLER. You are not expecting me to be present tomorrow?

The CHAIRMAN. No; not unless you desire. It is not required.

Mr. MILLER. Thank you.

The CHAIRMAN. The hearing is recessed until tomorrow.

(Whereupon, at 11:10 a.m. the committee recessed, to reconvene in executive session at 10 a.m., Friday, May 8, 1970.)

NOMINATION

FRIDAY, MAY 8, 1970

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

The committee met at 10:10 a.m., pursuant to recess, in room 4232, New Senate Office Building, Hon. Ralph W. Yarborough (chairman of the committee) presiding.

Present: Senators Yarborough (presiding), Javits, and Dominick.

Committee staff present: Robert O. Harris, staff director; John S. Forsythe, general counsel; Eugene Mittelman, minority counsel; and Peter C. Benedict, minority labor counsel.

The CHAIRMAN. The Committee on Labor and Public Welfare will come to order. We will continue the hearings on the nomination of Mr. Edward B. Miller of Illinois to be a member of the National Labor Relations Board for a term of 5 years expiring December 6, 1974.

The first witness this morning is the Honorable George Meany, President of the AFL–CIO.

President Meany, we welcome you back to this committee. You have appeared here many times in my over 13 years of service on this committee. In that period of time, you have endorsed many good laws which I have helped pass such as the Minimum Wage Act of 1966 which expanded coverage to 9 million additional American workers, the biggest minimum wage increase since the original 1939 law was passed under Franklin D. Roosevelt's guidance. For the first time, that minimum wage law brought under its protective fold farmworkers where there were more than seven workers on a farm. Franklin Roosevelt recommended that legislation but it took until 1966 to get that protection written into the law. I believe the Federal Minimum Wage Amendments and the Federal Construction Safety Act were constructive laws. Some of these safety bills we passed, and the Occupational Health and Safety Act covering all industrial workers is yet unpassed. I had hoped to see that passed in my service on this committee. I may not get to see it passed, but I am certain you have worked for it for a decade and longer. The support for it grows year by year, and I am certain in the not too distant future, it will pass.

If I named all of the good measures, President Meany, you endorsed and fought for in the last 12 years, we could be here until the sun goes down. I want to especially thank you for your help on one bill and that was the cold war GI bill of rights. The AFL–CIO was the first big organization in any field to come to our aid on that bill. It

was passed over strong opposition. Thank you for that cold war bill of rights, and many other bills.

Mr. Meany.

STATEMENT OF GEORGE MEANY, PRESIDENT, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. MEANY. Thank you, Mr. Chairman.

The AFL–CIO urges that the Senate reject the nomination of Edward B. Miller to be a member of the National Labor Relations Board.

Our sole and simple reason for opposing this nomination is that Mr. Miller, throughout his professional career, has been an employer lawyer.

On February 18, Mr. Miller held a press conference at the White House where the White House press office introduced him as "chairman-designate of the National Labor Relations Board."

During that press conference, the following exchange took place:

Question. Mr. Miller, was most of your work with unions or corporations in in the labor relations field?

Mr. MILLER. All of my experience as an attorney has been representing management. I have been asked on a couple of occasions to represent unions, but our firm has a sufficiently broad practice in representing management, so we felt a conflict of interest would inevitably develop were we to accept that representation. So it has been exclusively on the management side.

Mr. Miller quite aptly made our case.

Mr. Miller recognized that employers and unions are antagonistic and that a lawyer representing employers is necessarily so imbued with the employer point of view that it is not feasible for him to represent unions. There would be a "conflict of interest," Mr. Miller believed, in even representing employers in one case and unions in quite another.

There can be little argument with the proposition that the role of the National Labor Relations Board is essentially judicial, or Boquasi-judicial. In adjudicating unfair labor practice cases its function is wholly judicial, and in determining representation proceedings its role is substantially judicial, though in this field it also has regulatory and administrative responsibilities.

The late Senator Taft, in his committee report on what became the Taft-Hartley Act, stated:

* * * it is the belief of the committee that Congress intended the Board to function like a court * * * the Board's function is largely a judicial one * * * (Senate Report No. 105, 80th Cong., first sess., page 9.)

Moreover, the Board has a specialized jurisdiction: It handles only matters involving employers, or unions, or both. Anyone at all may file unfair labor practice charges, but charges may be filed only against employers or unions. In other words, only employers and unions can be respondents—that is, defendants—in unfair labor practice cases, and more often than not unions and employers are on opposite sides in unfair labor practice cases.

The same is true in representation proceedings. They always involve employers and unions, and employers and unions are usually on opposite sides.

Moreover, labor cases are often sharply controverted, with emotions running high on both sides. The loser is all too apt to charge the Board with bias and prejudice. Indeed, the Board has suffered from such charges throughout its history. That cannot be entirely prevented, but precautions can be taken not to appoint to the Board persons who by reason of their backgrounds are peculiarly open to such charges.

We feel the same way about the General Counsel of the NLRB. His responsibilities resemble those of a prosecuting attorney rather than a judge, but it is imperative that he be, and appear to be, impartial as between unions and employers when it comes to issuing complaints.

It is, of course, possible that some union or employer lawyers might be able to put their past associations behind them and render fair and impartial justice, yet a suspicion would always remain, and it is important that justice not only be done but that it appear to be done.

It seems apparent to us, therefore, that great care should be used in selecting members of the Labor Board to avoid persons who are so identified with either unions or employers that they may not be able to hold the balance even between them. We believe, specifically, that no one should be appointed to the Board from the ranks of labor or management, and that includes union lawyers and employer lawyers.

It would, of course, be both possible and proper to have a tripartite Labor Board, with members designated as representing the public, labor, and management. The War Labor Board during World War II and the Wage Stabilization Board during the Korean war were constituted in that fashion, and they worked well, though their functions were substantially different from those of the NLRB. At least one of the Canadian provincial labor boards, that is, the British Columbia, is constituted on the tripartite principle.

However, the National Labor Relations Board in this country is not set up on that basis. As we understand it, its members are all supposed to represent the general public, and not the special viewpoints of labor or management. It is desirable to have labor specialists on the Board, and many have served, but not at the expense of destroying its impartial character. Certainly it is not desirable, or fair, to have representatives of one viewpoint on the Board, with no comparable representation for the others.

Democratic administrations have, we believe, sought to find persons of neutral background, as between labor and management, for service as NLRB members or General Counsels. As far as we are aware, no Democratic administration has ever appointed to the Board or as General Counsel a lawyer who was specializing in the representation of unions or employers in labor matters.

Twenty-one men have been appointed to the Board by the Democrats. At the time of their appointment, two were Members of the Congress, three were Administrative Assistants to Senators, eight were Federal officials, two were State officials, two were law professors, one was an arbitrator, one was in the Navy, and two were lawyers with a general private practice. Moreover, all three of the Democratic appointees to the office of the independent General Counsel, a position created in 1947, were career Board employees.

The labor movement has had a certain amount of influence with some Democratic administrations, but no union lawyer has ever been appointed to the Board or as General Counsel. You can imagine the reac-

tion of many Senators—not to mention the National Association of Manufacturers and the Chamber of Commerce to such a nomination.

The experience under Republican administrations has been quite different. Counting Mr. Miller, there have been nine nominees to the Board and three General Counsels. Six of these men were Federal officials, and one was a State Judge. However, five of the Republican nominees, nearly one-half, have been drawn directly from active service with the business community. Thus, three nominees to the Board were, at the time of their nominations, employer lawyers: Mr. Farmer, the first Chairman of the Eisenhower Board; Mr. Joseph Jenkins, the fifth Eisenhower appointee; and Mr. Miller. In addition, Mr. Beeson was a business executive. Finally, Mr. Theophil Kammholz was also an active employer lawyer at the time he became the first Eisenhower-appointed General Counsel.

Interestingly enough, both Mr. Farmer and Mr. Kammholz served abbreviated terms, 2 years in each case, and then returned to an augmented employer-oriented practice.

Now President Nixon has chosen Mr. Miller. Surely we cannot be blamed for being concerned lest history repeat itself.

Mr. Miller is not only an employer lawyer, but a relatively young one. Not only is he imbued with the employer viewpoint, as he himself stated, but there cannot but be concern that he may contemplate an ultimate return to private practice representing employers. Any such intention, or even possibility, is likely to further accentuate any predisposition to the employer viewpoint.

The Senate should reject this appointment, and any other appointment of a partisan advocate to what is meant to be a nonpartisan quasi-judicial agency.

We further urge that the Labor Committees of the two Houses consider legislation to ban former Board members and General Counsels from practicing before it for a substantial time after leaving, such as 5 years.

The CHAIRMAN. Thank you, Mr. Meany. This is a clear and succinct statement of your position and a very interesting historical summary of the types and experiences of the people previously appointed to the NLRB.

I recognize the distinguished ranking minority member, Senator Javits of New York.

Senator JAVITS. Mr. Chairman, I join the Chair in my great respect for Mr. Meany and my great respect for his views and the great organization for which he speaks.

I do not agree with his conclusions but they are clearly stated as is always the case with him, and I have no questions.

The CHAIRMAN. The Senator from Colorado, Senator Dominick.

Senator DOMINICK. Thank you very much, Mr. Chairman.

Your statement is clear and succinct as the ranking minority member stated.

Do you have any specific allegations against Mr. Miller as a person or is this just a general principle?

Mr. MEANY. None whatsoever.

Senator DOMINICK. As far as you know, he is honest and capable?

Mr. MEANY. So far as we know, yes.

Senator DOMINICK. Except for the idea of management background involved, then you have no objection?

Mr. MEANY. No objection.

Senator DOMINICK. That is all I have, Mr. Chairman.

The CHAIRMAN. We expect to have an executive session on this nomination next Wednesday, so I will keep this record open until May 12, next Tuesday, for any additional statements to be filed by anyone who desires to file a statement either supporting or in opposition to the nomination.

We appreciate your coming here, Mr. Meany, and not merely sending up a statement, but you have given us a statement which is worthy of the great organizattion which you head and of which you are president and for which you have appeared here on so many occasions and most of them on a much broader basis advocating some law that would benefit all Americans. When you advocate an industrial safety law, you do not advocate it just for your union members but all 75,000 industrial workers of which your membership is only a fragment.

So many times I have seen you come here advocating bills that had only peripheral benefits for your members such as educational laws and health laws.

We congratulate you on your broad vision and not merely advocating a specialized interest or sending Mr. Biemiller to testify for some law that had a specialized effect for only the members of your unions but a broad, general impact on the American life. Particular I refer to the many educational and health laws that I have seen go through this committee and through the Congress in the past dozen years. The AFL–CIO has virtually always supported those laws and has always given them a lot of backing, helping them pass for the benefit of the entire country. I congratulate you for that vision.

Mr. MEANY. Thank you, Mr. Chairman.

(The material submitted for the record follows:)

UNITED STEELWORKERS OF AMERICA,
AFL-CIO LOCAL 4629,
Fort Worth, Tex., February 25, 1970.

Senator RALPH YARBOROUGH,
U.S. Senate Building,
Washington, D.C.

MY FRIEND MR. YARBOROUGH: Speaking as an active member of organized labor, I wish to direct an appeal to you for myself and my union brothers. We realize that Mr. Edward B. Miller to be Appointed as head of the National Labor Relations Board, must be accepted by the Senate.

It is our urgent request that you do everything in your power to prevent his appointment.

A reply by you on this issue would be greatly appreciated.

Sincerely,

WILLIAM J. SWAIN.

LOYOLA UNIVERSITY, SCHOOL OF LAW,
Chicago, Ill., February 21, 1970.

Hon. RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: The academic life is more confining than was my law practice. Thus I don't get to as many bar association gatherings such as we attended in St. Louis in 1949 when Mrs. Kamin and I first met you and Mrs. Yarborough on the Mississippi River side wheeler, or in 1952 and 1964 when we met again at gatherings of the Texas Bar Association and the National Association of Defense Lawyers in Criminal Cases, both at Houston, where we were both program speakers.

First hand reports on you are delivered to me from time to time by Nat Wells and Jerre Williams. I read about you with regularity in the many publications I peruse daily to stay abreast of labor law developments so that my classroom performance remains sharp and current. I take pride in the knowledge that I was fully aware of your abundant talents long before you were ever elected to important public office.

The primary purpose, of this letter is to tell you what I know about Edward B. Miller, the Chicago lawyer who has been nominated by President Nixon for the Zagoria vacancy on the National Labor Relations Board, and, if confirmed, would be the Board's chairman. Mr. Meany has expressed his opposition to Mr. Miller's appointment and has made his "record". I seriously question the possibility that this expression in behalf of the AFL–CIO will develop into a blocking campaign.

Actually, I think Mr. Meany is pleased with this designation as against the other candidates who were pushing for the job—men who realy don't believe in collective bargaining as a part of the democratic process.

I have known Ed Miller since he first came to Chicago as a newly admitted lawyer back in 1948. He came with fine recommendations from Nate Feinsinger who was his teacher at the University of Wisconsin. I participated in labor-management controversies as his adversary. I always found him fair and reasonable in all his dealings. He was never a "union-buster" or a hard-nosed bargainer. He has done more than his share in civic and bar association activities and has given freely of his time to teaching labor-management and labor law courses in several graduate schools in Chicago. When I was ill last spring, he very graciously substituted for me at great inconvenience to his own busy practice. He was well liked by my students in the Labor Law course. For my part, I had no worry about his complete objectivity in dealing with the subject matter of the course.

Every union lawyer in Chicago with any experience at all will confirm my high evaluation of the nominee. Personnel in the Chicago Regional Office of the Board are pleased with the appointment, although, of course, they are quite discreet about discussing it. This man possesses real judicial temperament which he combines with admirable expertise in the labor law field.

If there is any significant opposition to Mr. Miller's appointment, I will be pleased to come to Washington at my own expense to state under oath what I have reported in this letter.

I wish you very well in all your endeavors and hope that we shall meet again very soon.

Cordially,

ALFRED KAMIN,
Professor of Law.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, D.C., March 6, 1970.

Hon. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate

DEAR MR. CHAIRMAN: I have received the enclosed telegram from Mr. G. A. Kinnick, Recording Secretary, National Park Lodge 168, I.A. of M. & A.W., of Livingston, Montana, which I am passing on for the Committee's attention.

With best personal wishes, I am

Sincerely yours,

MIKE MANSFIELD.

LIVINGSTON, MONT., *February 25, 1970.*

SENATOR MIKE MANSFIELD,
U.S. Senate Office of the Majority Leader,
Washington, D.C.

We request you assistance in evaluating the appointment of Edward B. Miller for Chairman of the National Labor Relations Board. We object to his appointment as we feel he could not act impartially with his former background.

G. A. KINNICK,
Recording Secretary National Park Lodge 168,
I A of M & A W.

LAW OFFICES OF MCINNIS, WILSON, MUNSON & WOODS,
Washington, D.C., April 14, 1970.

Hon. RALPH W. YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: The purpose of this letter is to express to you my personal endorsement of the nomination by the President of Edward B. Miller of Chicago to become Chairman of the National Labor Relations Board.

In my capacity as general counsel of the United Papermakers and Paperworkers, AFL–CIO, and counsel for a number of other unions, I have dealt with Mr. Miller and the labor partners of his law firm in Chicago on numerous occasions. While they aggressively represent their clients' interest, I have found Mr. Miller and his partners always capable of considering labor problems objectively. They are not "labor baiters." I doubt if we could expect the present administration to submit a better nomination.

May I congratulate you on your vote in the Carswell case and extend to you my best wishes and support in your reelection to the Senate this year.

Sincerely yours,

WARREN WOODS.

The CHAIRMAN. The hearing is adjourned.

(The committee was adjourned at 10:25 a.m.)

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