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AGRICULTURAL LABOR-MANAGEMENT RELATIONS

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KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON AGRICULTURAL LABOR

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 5010 (Title 1) and related bills

REGARDING LABOR-MANAGEMENT RELATIONS IN AGRICULTURE

HEARINGS HELD IN WASHINGTON, D.C.,
MARCH 23 AND APRIL 27, 1972

Printed for the use of the Committee on Education and Labor

CARL D. PERKINS, *Chairman*



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AGRICULTURAL LABOR-MANAGEMENT RELATIONS

THURSDAY, MARCH 23, 1972

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2261, Rayburn House Office Building, Hon. James G. O'Hara (chairman of the subcommittee) presiding.

Present: Representatives O'Hara and Veysey.

Staff members present: A. C. Franklin, counsel; Jim Harrison, staff director; Elnora Teets, clerk; John Miller and Michael Bernstein, minority staff.

Mr. O'HARA. The subcommittee will come to order.

The Subcommittee on Farm Labor of the House Committee on Education and Labor is today beginning hearings on bills dealing with agricultural labor-management relations. Those bills are: H.R. 5010, an omnibus bill, dealing with that subject among others which I have introduced; H.R. 10445, introduced by Congressmen Sisk and McFall; H.R. 1410, H.R. 1523, H.R. 2546, H.R. 3571, and H.R. 4438, identical bills sponsored by Congressmen Leggett, Reid, Roybal, Mink, and Ryan, dealing with the same subject; H.R. 3625, by Mr. Gonzales; and H.R. 5281 by Mr. Thompson of New Jersey, and H.R. 12486, by Mr. Helstoski, bills identical to H.R. 5010; also H.R. 1689, sponsored by Mr. Talcott; and a bill by Mr. Veysey, H.R. 10459; and a bill that was introduced yesterday by Congressmen Leggett, Quie, Ullman, and Teague of California, H.R. 13981.

Our first witnesses today are two very distinguished Members of the congressional delegation, Mr. Sisk and Mr. McFall. With due regard to the rule of seniority, we will hear first from Mr. Sisk.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SISK. Thank you very much, Mr. Chairman.

I would say, in connection with seniority, I am just barely senior to my good friend, John McFall.

First, let me express to you, Mr. Chairman, my deep appreciation for setting these hearings and for the opportunity to go into the subject. I would hope to have a rather comprehensive indepth study, and I assume that is what you have in mind, of the problems of labor-management relations, specifically as they concern agricultural production, because to me, I think this is as much of a concern to

the consumer and to all of us as Americans who need and must have the food and fiber that are produced by the agricultural industry in this country; and of course, a very necessary part of that production is the labor end of it, because without the labor we would not have the production.

So we are dealing here in an area where we have a management-labor situation both very vital and very important to what I consider probably one of the most important industries in the country, one on which we all have to depend.

First, I would ask unanimous consent that my statement in full be made a part of the record, and then I will just make some very brief comments.

Mr. O'HARA. Without objection, your statement will be entered in the record at this point.

(The statement referred to follows:)

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I appreciate this opportunity to testify before the committee today on farm labor legislation.

Many of us in Congress have for a long time recognized the need for protecting the farm worker, the farmer and the consumer from the unrestrained practices now permitted in the field of agricultural labor and the lack of benefits to the farm worker guaranteed by law to organized labor in other occupations.

I, along with my California colleague, Congressman John J. McFall, recently introduced a farm labor bill which would bring agricultural labor in under the legal framework of the National Labor Relations Act.

I cannot speak for my good friend, Mr. McFall, but my reason for the introduction of legislation was the chaotic farm labor picture in Central California. Groups of farm workers were organizing to air legitimate grievances but using tactics which are illegal, or at least not permitted where labor-management negotiation has been a long established practice.

As the organizations became more effective strikes followed. Having no guidance into past labor practices, organizers and farm labor leaders took the shortest route to what they hoped would be their realization of a short range goal—the organization of farm labor into an effective bargaining unit.

I am sure most of you who are here today will agree with me that tactics followed to achieve a short range goal would be much different than for an effective farm labor-management relations over the long haul.

The former seeks only recognition. Therefore, the practices followed are designed to achieve that end whether they disrupt farm to market commerce, destroy property or even cause physical harm.

An effective ongoing farm labor-management relationship is going to recognize the legitimate needs and desires of the farm laborer, the farmer and the consumer too.

The tactics which serve for organizing do not serve well for a continuing relationship. When they disrupt farm to market movement of produce they raise the price of the produce. The farmer makes no profit, however, because his costs have gone up due to delay or having to seek alternate methods of harvest.

The secondary boycott, which has been used, also restrains trade, disrupts commerce and has caused violence. Again, except for the short-term gain of farm worker union recognition, no one benefits. The result is often to hasten the mechanization of farms, resulting in their consolidation for higher unit production and the eventual elimination of farm labor. I am not suggesting that this is necessarily bad if mechanization proceeds at a slow enough pace so that those who engage in farm labor can seek other jobs.

There always will be some hand labor necessary in agriculture. There are some things the worker can do in agriculture that no machine yet imagined can accomplish. Therefore, I am not concerned about the total disappearance of the

worker from agriculture. This is another reason for affording him legal protection.

Farm labor-farm management disunity can be expensive. The most effective time for a strike for purposes of realizing the short-term gain I described above is at harvest time. In Central California where the produce is fruits and vegetables, a short delay can cause disaster and in some cases bankruptcy for the farmer who must move his produce to market or packing plant to avoid its deterioration in the field. The loss of these farmers also means the loss of jobs for the workers.

My farm labor bill would, I believe, solve some of these problems. It would permit laborers to organize, ballot secretly for the union of their choice and for the leaders of their choice, make their union legally responsible under the NLRA, thereby protecting the farmer and the consumer.

There is no argument about a fair wage for the laborer. I believe, as do all advocates of organized labor, that the worker should have a fair share of the profit realized from the product he helps produce, or move to market. Those who picture restraints on organized farm labor as oppressive, do farm labor a disservice.

The organization of farm labor is an accomplished fact. Opponents of organization should recognize that fact and not face it with lamentations and wringing of hands. We should move to make organized farm labor responsive to its members and to the community as a whole. This means the imposition of those legal restrictions which have made labor successful in other fields, by helping preserve and enrich these fields of endeavor.

As many of you here in this Committee room know, the United Farm Workers Organizing Committee recently became an official part of the AFL/CIO. The question is does this make my bill academic. It does not. The new AFL/CIO affiliate is not covered by reason of affiliation with the AFL/CIO under the NLRA.

Recently the NLRB moved against the United Farm Workers National Union, as the Chavez union is now called, alleging violations of the NLRA for secondary boycotting. California labor officials objected with justification saying that the NLRB was trying to subject farm workers to the penalty of the NLRA even though they have been deliberately excluded from its benefits. I am certainly in sympathy with California labor interests in this instance. It is all the more reason, I believe, why my bill should be adopted by Congress.

The bill is simple. It declares only that farm labor unions will be recognized under the NLRA.

I urge its passage.

Mr. Chairman, thank you.

Mr. SISK. Let me just say that the bill, specifically H.R. 10445 which Mr. McFall and I have introduced, I suppose is probably about the simplest, if I can use that term, the shortest, briefest of any of the bills that are pending.

Yet basically it seems to me it does the thing that those of us in California who have had very close and sometimes rather serious experiences during the past few years feel is needed. It simply removes the agricultural exemption in connection with farm labor, brings farm labor under the National Labor Relations Act in exactly the same way and on the same basis as all other labor, without reservation.

I think it is about five or six words, as I remember, actually that go in the bill. So it may be a very simple approach. Yet basically, as I view the problems that we have experienced in California during the past 5, 6, 7, 8 years, it has been a situation where literally both labor and management have been dealing in a legal "no man's land."

This bill simply brings the problem and both parties into what I term the legal ball park and applies the normal law which the Congress saw fit to pass many, many years ago in connection with fair and equitable bargaining on the part of both sides, and doing it in a democratic way.

I could take a good deal of time going into the background and some of the things that have happened. Some of them have been tragic. Some have been detrimental both to labor and to management as a result of events in the past. Certainly we are hopeful that your committee, after a study in depth and a full consideration, can come up with some solutions.

I am not here today opposing specifically any of the other bills that may be pending. There might very well be parts of some of those bills, or all of some of them, possibly, that in the final analysis I could support if in a sense it moved us in the right direction of giving legal basis and legal rights to the farm worker, because in my opinion he is as fully entitled to the rights of collective bargaining as the people working in any other industry.

Back many years ago, there was a feeling that because of peculiarities of agriculture, that there should be the exemption. I do not argue with the Congress and the administration that took that position at that time.

I still recognize it still has peculiarities, but in the final analysis, it seems very important to me from the standpoint of democratic processes both for labor and for management that they must be brought into the legal ball park.

Mr. McFall and I feel, after long and agonizing worry with this problem, that it is probably the simplest, quickest, and easiest way and it is something that both labor and management can live with and work with.

I think that completes my statement, Mr. Chairman.

Mr. O'HARA. Mr. Sisk, thank you very much. I want you to know that I think I can speak for the entire committee in acknowledging that there is probably no Member of Congress who has a deeper knowledge or keener appreciation of the kinds of farming in which fair-size numbers of workers are employed than you, or who comes to this problem having given it any more thought than you have.

My experience with you over the years has been one that has demonstrated your deep interest in agriculture and in the problems of agricultural labor, and I want to assure you that the committee will give very serious consideration to this approach you urge, which may be the kind of approach that could succeed because it is very simple.

It does not try to break new ground. It attempts to use the established procedures and simply apply them to a new group of workers. That has a lot of merit in terms of being easy for the members and the public to understand and making sure that there are no hidden gimmicks in it and no fishhooks, no new and unworkable ways of handling labor relations.

I think you are to be commended for your efforts in this field.

Mr. SISK. Thank you, Mr. Chairman.

Mr. O'HARA. Mr. McFall, we would like to hear from you, because we know you share Mr. Sisk's interest in the problems of agriculture and agricultural labor.

**STATEMENT OF HON. JOHN J. McFALL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. McFALL. Thank you, Mr. Chairman.

I would also like to have my statement printed in the record at this point, and I would like to make some comments on the subject.

Mr. O'HARA. Without objection, your statement will be entered in the record at this point.

(The statement referred to follows:)

**STATEMENT OF HON. JOHN McFALL, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF CALIFORNIA**

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee today to urge favorable action on a bill I have sponsored to amend the National Labor Relations Act to include agricultural workers.

In 1935, when the law was originally enacted, the House Committee on Labor excluded agricultural workers. A review of the legislative history clearly indicates, however, that the decision was taken on the grounds of expediency, not philosophy. It was believed at that time that with agricultural workers included, sufficient votes might not be obtained to pass the bill. There was no intent by members of the Committee to create a permanent situation.

There have been many changes in our country since those rather bleak days of 1935, and I believe that the time has come to rectify the omission. Failure to cover farm workers was a principal factor in preventing this segment of our population from enjoying advances that have accrued to other men and women of the labor force.

There is a growing need to provide an appropriate framework of law for farm labor negotiations. This can best be provided, in my judgment, by inclusion of farm workers under the basic law governing the bulk of organized labor.

During the past decade in California, many farm workers have joined one organization in the legitimate pursuit of achieving better wages and working conditions. Through the use of secondary boycotts—illegal for workers whose activities are governed by the National Labor Relations Act—this organization has achieved a degree of success. The boycotts and other tactics by the labor organization and its supporters on one side, and the farming community's retaliatory responses on the other have created extreme disruption in a vital segment of the economy.

The general public has a direct interest in the situation because of shortages of food supplies which have occurred.

All three elements, the workers, the farmers and the general public, would be far better served if the bill I have joined my good friend, Congressman B. F. Sisk, in proposing were enacted.

The workers would certainly benefit by at last being afforded full protection of the law in their endeavors to organize without harassment. True, a relatively small segment of the total farm labor population has enjoyed limited success under very special circumstances. But their horizons for long-term benefits such as obtained by the major labor organizations operating under the National Labor Relations Act would be greatly broadened if this bill is approved.

This would be especially true in States like California where conglomerates are taking over large holdings of farm land. Without protection afforded by uniform law, the tremendous financial resources of the new agricultural giants certainly will be mobilized to offset the initial gains made the United Farm Workers Organizing Committee established and led by Cesar Chavez.

Under the NLRA farm workers would be able to vote by secret ballot on whether they want to be recognized by a union, and if so, they could choose the union. They also would be able to cast a secret ballot for union leaders.

Farmers would gain through protection from the type of activity that has prevailed in California's perishable fruit and vegetable industry in recent years. The secondary boycotts, sporadic violence, and other uncontrolled activities at harvest time have had harmful effects.

Disruptions in the movement of crops from farm to market and the resulting shortages have raised prices of produce, doing further damage to housewives' inflation-swollen budgets.

Some opponents of bringing agricultural workers under the NLRA have expressed the fear that if strikes occur at harvest time, large losses would occur. This same argument was forwarded years ago, however, when canneries were unionized. There have been some strikes curtailing production, it is true. But all in all, the calamity that was predicted has not come to pass, primarily because both sides have recognized they must negotiate with each other speedily and in good faith in order to keep losses to both sides at a minimum during critical harvest periods.

Nevertheless, the perishability of some crops is a factor to be considered. I would suggest that if farm workers are included under the NLRA, the National Labor Relations Board should set up procedures to handle labor disagreements involving special crops which mature in a brief period of time and must be harvested as quickly as possible. This could be done by assignment of NLRB representatives to areas where these crops are produced in order to expedite settlements.

Since the NLRA was enacted in 1935, costly industrial labor strife that interrupted inter-state traffic and lowered production has been reduced dramatically. Workers and industry have made great gains. There is no valid reason for further delaying similar benefits to agricultural workers whose status has fallen even lower in the economic spectrum.

It is imperative that action be taken now to end this deficiency and to provide the framework of law necessary to correct near chaotic conditions now existing in farm labor-management relations. The passage of H.R. 10445 would accomplish these goals and I urge that this be done.

Mr. McFALL. By way of background, Mr. Sisk and I have contiguous districts in California. We have counties that are the richest producers of agricultural products in the country and in the world.

We have had our share of controversy over the formation of union organizations in agriculture. From this experience, both of us have concluded that we must introduce this bill. I believe there must be a framework of law that the public, the agricultural worker, and the agricultural owner may rely upon in agricultural labor relations.

We can no longer continue with the "law of the jungle," you might say, where there is no organization, no framework of law, to govern labor relations in agriculture in our State and in the country.

Years ago, I worked in the canneries when I was a student going to school. They said at that time there could not be unions in the canneries because they might strike during harvest season. There have been unions in canneries for over 25 years; I believe that they have been very successful in that field. Back in 1966, when I broached this idea to my people, the farmers were opposed to it because they said they will strike at harvest time. And the unions then were in favor of it.

I think it is somewhat reversed now. The farmers see now that they must have some kind of framework of law in order to protect themselves, and they see also that the farmworkers are entitled, like they are, to have an opportunity to vote on whether or not they should be in a union or stay out.

Labor has had some success with organizing in California under the "no rules" concept that we have which permits boycotts and so forth. So they are not as enthusiastic as they were. But I still think that their basic objective is to have a law which will permit the organization of agricultural unions under a proper framework.

I think this will be for the benefit of the entire country. Right now we have organization in agriculture. We have labor unions in

agriculture. We have strikes in agriculture. They are settled immediately in the field. We should have a law that will permit the proper exercise of all the rights that are now being exercised in an extralegal way.

The only thing that could be added to the bill that we have introduced—and I agree with Mr. Sisk, the other bills may be even better than the one we introduced—would be some way of providing immediate settlement-of-strike procedures for immediate settlement of strikes without having them delay and having someone have to go to San Francisco or Los Angeles or Washington in order to get strikes settled.

Strikes are settled right now out in the field in an hour or so, between the workers and the owners. They have a multiplicity of them, and they are settled quickly, and they go on and harvest the crops.

NLRB procedures could provide for this. It need not be in the law, but it should be considered in some way.

Mr. Chairman, I want to say that I agree with my colleague that we are very appreciative of your committee's holding this hearing in order for the Congress to consider this very important question.

Mr. O'HARA. Mr. McFall, thank you very much.

I know that when I came to Congress, which was a good long while ago, you two gentlemen were both at that time already considered leaders in the consideration of agriculture and problems of agriculture from your districts which produced tremendous dollar volumes of agricultural products.

I remember, too, back then, the first Congress when I was a freshman and you gentlemen had been here a little while, we had what became the Landrum-Griffin Act, and I remember both of you voted against it, as I did, and it was a substitute for another bill, the Kennedy-Elliott bill, which had been reported out by the committee.

Of the language in Landrum-Griffin, 85 percent was taken bodily with a scissors right out of the Kennedy-Elliott bill, and there were changes in only 15 percent of that Kennedy-Elliott bill, and they had to do primarily with the question of organizing.

The big difference between Kennedy-Elliott and Landrum-Griffin was that Landrum-Griffin amended Taft-Hartley in some ways that made it much more difficult for labor organizations to organize in areas where they were not already organized.

I know that that is one of the fears of the United Farm Workers Organizing Committee, that if they are compelled to organize under the conditions imposed by Taft-Hartley and Landrum-Griffin, it would be an extremely difficult job.

I recognize, too, that there is much to be said for the idea of invoking a rule of law. I want to note that the committee appreciates your work on this subject, and we will be in touch with you and in consultation with you as we proceed with this legislation.

Mr. McFALL. Thank you, Mr. Chairman.

Mr. O'HARA. Mr. Veysey.

Mr. VEYSEY. Thank you, Mr. Chairman.

I am sorry that I was not here at the beginning of the meeting to hear Mr. Sisk's remarks, but I am very appreciative of the fact that both Mr. Sisk and Mr. McFall, my good colleagues from the State of

California, have come before this committee to urge that legal guidelines be established in this troublesome field.

We in California have certainly experienced some of the trouble, and I think we see generally the need for some action here.

They proposed a bill which is quite different than the approach that I have taken. They have advocated some very excellent reasons for the consideration of their approach. I think they have also indicated a most commendable openmindedness that there may be other approaches which might be blended together here.

I, for one, happen to see that historically and economically in many ways there are real differences that separate agriculture from other parts of industry in terms of its labor relations. These are established in present law and have, it seems to me, good factual basis for their existence.

The settlement of disputes in the field, I think, is an important need in agriculture. We sense that need, and you stressed that most significantly.

I think the history of settlement of actions before the National Labor Relations Board is one of pretty extended periods. I saw a figure that indicated the average length of time was around 300 days to get a decision through that body, and, of course, for a farmer working on a close time cycle, that is a pretty difficult thing.

I do appreciate your coming to the committee today with this recommendation. I think it is a most important one.

I hope that we will pursue this, Mr. Chairman, in other hearings and in other locations to get all of the information on this subject before the committee. I commend the two gentlemen for their approach.

Mr. O'HARA. Thank you very much, gentlemen. I have gotten you out of here with 3 minutes before your 10:30 meeting.

Our next witness will be the Honorable Burt Talcott, a Representative in Congress from the State of California.

Mr. Talcott, would you please take a seat. The committee would like to hear from you.

STATEMENT OF HON. BURT L. TALCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. TALCOTT. Thank you very much, Mr. Chairman.

First, I commend the subcommittee for holding these hearings. As the chairman and members of the committee know, I have been urging such hearings for several years. I appreciate this opportunity to testify. I have some written materials and a prepared statement which I would like to ask unanimous consent to include in the record, if I may.

Mr. O'HARA. Without objection, your full statement will appear in the record at this point.

(The statement referred to follows:)

STATEMENT OF HON. BURT L. TALCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, firstly, I commend this subcommittee for holding these hearings. As the chairman and members of the committee know, I have been urging such hearings for several years. I very much appreciate the opportunity to testify.

I have some brief written materials and a prepared statement which I ask unanimous consent to include in the record. I will try to summarize my proposals to save time for the other witnesses this morning.

I come here with some credentials.

I live in, and represent one of the most productive and progressive farm areas on this planet. We produce close to 30 percent of our Nation's strawberries, head lettuce and celery. The largest beet sugar manufacturing plant in the world is in our district. We lead in the production of many other vegetables.

I have introduced more legislation to improve the condition and welfare of farm workers than any other Member of the Congress.

Unfortunately, Agriculture was expressly excepted from the National Labor Relations Act in 1935. It has been in limbo ever since. Mavericks—among farmers, farm workers and union organizers—have marauded in the fields, processing plants and grocery stores. There are practically no rules or laws. Only the law of the jungle prevails. The chaos frustrates and damages the worker and farmer; it increases the cost and reduces the quality and wholesomeness of our food products for the consumer.

We desperately need Federal legislation.

Agricultural workers, farmers, processors, suppliers, merchandisers and unions all operate in interstate commerce.

Piecemeal, conflicting or varying state legislation would be confusing and ineffective.

I would like to emphasize six points:

1. The cruel circumstances of the migrant farm worker and his family.
2. The need for farm worker protective legislation to improve—
 - (a) Wages and working conditions,
 - (b) Living conditions of farm worker families,
 - (c) Educational and training opportunities for farmworkers' children.
3. The need to treat agriculture differently from conventional manufacturing, transportation or building and construction industries.
4. The need to outlaw the strike, lockout and secondary boycott—and replace these barbaric, outmoded weapons of economic warfare and destruction with legal mechanisms for settling disputes fairly and promptly without injury to the parties or the consumer.
5. The need for secret elections in unions—for organizational and representative purposes and to strike or to continue a strike in process.
6. The need to hold these hearings in the field—where the problems are and where the people are. Poor farmworkers can't come to meetings here. They aren't represented. Their voices are not heard. They want to be heard. They should be heard. This committee would be doing a great service to hold hearings in a farm community. The committee, itself, needs to know much more intimately the conditions and problems of the farm worker as they exist in the fields. You would help yourselves to understand if you would "see it as it is". I would be pleased to assist in arrangements for field hearings. I invite you to Salinas, Calif., at any time.

Our Nation depends on agriculture—nutritionally and economically. Agriculture is our Nation's No. 1 industry. Growers in my congressional district lead the world in productivity, innovation, and progress. Farm workers in my district, including migrants, receive higher wages, and enjoy better working and living conditions than they can find doing anything else anywhere else in the world.

Still this is not good enough and we are trying to improve our produce, our working and living conditions—our skills.

We have many migrant farm workers who follow the harvests—they are the poorest of the poor and the most disadvantaged of the disadvantaged. Migrancy is their nemesis. Their wages are not disproportionate to their skills, but the cost of moving and the lack of regular employment caused by the vagrancies of the harvests, keep them poor.

To help the farm workers in my district, I have proposed comprehensive legislation to compliment the efforts of the industry, the unions, the local and State governments, as well as the public and private social organizations.

I have introduced legislation (H.R. 14947 in 1966) and advocated passage of legislation during several Congresses to provide "impacted aid" to school districts through which the children of migrant farm families must swarm and to provide extra and compensatory bilingual training for the children of farm workers.

I have cosponsored legislation for manpower training to enable farm workers and their children to develop skills which will permit them to obtain permanent jobs and to escape the grinding poverty of migrancy.

I have supported legislation to establish supervised day care centers for children of farmworkers.

I have introduced legislation (H. R. 20133 in 1968) and during subsequent Congresses to require all states to provide workers with benefits comparable to industrial labor benefits, including:

First. Regulation of farm labor housing centers and employer-furnished housing accommodations, including standards of sanitation, location, construction, density, and maintenance of housing.

Second. Regulation of farm labor contractors and crew leaders, requiring annual licensing or registration and prompt payment of wages to laborers, and prohibiting such undesirable employment practices as giving false information on terms, conditions, or the existence of employment.

Third. Regulation of transportation of migratory farm workers, including standards for safety and operation of equipment, qualifications of drivers, and safety and comfort of riders.

Fourth. Regulation of uniform minimum ages for agricultural employees.

Fifth. Regulation of uniform minimum wages for agricultural employees.

Sixth. Regulation of wage payments requiring regular paydays, payment in cash or readily negotiable form, and prompt payment on termination of work.

Seventh. Workmen's compensation providing monetary and medical benefits to agricultural employees injured on the job.

Eighth. Temporary disability insurance providing benefits for agricultural workers for non-work-connected illnesses or injuries.

Ninth. Unemployment insurance providing benefits for agricultural employees during periods of involuntary unemployment.

Tenth. Regulation of field sanitation facilities.

It was only in 1970 that a few other Members of the Congress displayed any interest in unemployment compensation for farm workers—and this was a superficial "grandstand" last-minute amendment to an industrial compensation bill without any prior committee study or deliberation.

Thank you again for the opportunity to appear before this distinguished Committee. I trust that these hearings will result in the enactment of beneficial legislation for the farm workers and the farmers.

Mr. TALCOTT. I will try to summarize now, if I may.

First, I would like to commend the gentlemen from California, Mr. Sisk and Mr. McFall, for their contribution. I concur with the chairman that they have made valuable contributions and know firsthand a good deal about the problems of agriculture and the farmworker in California.

I think I come here with some credentials also. I have been a member of a union, I have been on strike. I believe in organizing unions. I believe in collective bargaining. I live in and represent one of the most productive and progressive farm areas on this planet. It may not be the richest; I have not checked the money value as Mr. Sisk and Mr. McFall have done. But we produce close to 30 percent of all the Nation's strawberries on less than 1 percent of the land in my district, 30 percent of the head lettuce, and 30 percent of the celery.

The largest beet sugar manufacturing plant is in my district, and we lead in the production of many other vegetables.

I have introduced more legislation to improve the conditions of the farmworker than any other Member of the Congress.

Unfortunately, agriculture was expressly excepted from the National Labor Relations Act in 1935. It has been in limbo ever since. Mavericks—among farmers, farmworkers, and union organizers—have marauded in the field, processing plants, and grocery stores.

There are practically no rules or laws. Only the law of the jungle prevails. The chaos frustrates and damages the worker and farmer;

it increases the cost and reduces the quality and wholesomeness of our food products for the consumer.

We desperately need Federal legislation.

Agricultural workers, farmers, processors, suppliers, merchandisers, and unions all operate in interstate commerce. Piecemeal, conflicting or varying State legislation would be confusing and ineffective.

I would like to emphasize six points:

1. The cruel circumstances of the migrant farmworker and his family.

2. The need for farmworker protective legislation to improve.

(a) Wages and working conditions,

(b) Living conditions of farmworker families,

(c) Educational and training opportunities for farm workers' children.

3. The need to treat agriculture differently from conventional manufacturing, transportation, or building and construction industries.

4. The need to outlaw the strike, lockout, and secondary boycott—and replace these barbaric, outmoded weapons of economic warfare and destruction with legal mechanisms for settling disputes fairly and promptly without injury to the parties or the consumer.

5. The need for secret elections in unions—for organizational and representative purposes, and to strike or to continue a strike in process.

I am not one that is concerned about the strike at harvest time, because I do not think strikes at harvest time hurt anybody but the farmworker himself, and the farmworker will not strike during harvest time because when the strike is over the harvest is over, and his best opportunity to earn is gone.

I know from first-hand experience that the farmworkers' families would come close to clawing the eyes out of anybody that suggests that their breadwinner in the family not work during harvest time when their chances of earning are greatly increased over the other times.

The sixth point that I think is important is the need to hold these hearings in the field—where the problems are and where the people are. Poor farmworkers can't come to meetings here. They aren't represented. Their voices are not heard. They want to be heard; they should be heard.

This committee would be doing a great service to hold hearings in a farm community. The committee, itself, needs to know much more intimately the conditions and problems of the farmworker as they exist in the fields. You would help yourselves to understand if you would "see it as it is."

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Still, this is not good enough and we are trying to improve our produce, our working and living conditions—our skills.

I would like to just remind the committee of some of the legislation I have tried to introduce in the past, particularly concerning migrant farmworkers who have to follow the harvest; and I think that these are the most disadvantaged of the disadvantaged and the poorest of the poor.

To help the farmworkers in my district, I have proposed comprehensive legislation to complement the efforts of the industry, the unions, the local and State Governments, as well as the public and private social organizations.

I have introduced legislation (H.R. 14947 in 1966) and advocated passage of legislation during several Congresses to provide "impacted aid" to school districts through which the children of migrant farm families must swarm and to provide extra and compensatory bilingual training for the children of farmworkers.

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Thank you, again, for the opportunity to appear before this dis-

tinguished committee. I trust that these hearings will result in the enactment of beneficial legislation for the farm workers and the farmers.

I think the committee should not just look for an easy way or the simplest bill, but this committee could break some new ground. They could be innovative and progressive, and they could take some big steps forward that would greatly help the farm worker, even though it is difficult.

Even though we might have to have more hearings and talk with the poor farmworker in the field, I think it would be worth the time and effort and cost to you to really try to develop some important new legislation which will really benefit the farmworker.

Mr. O'HARA. Thank you very much, Mr. Talcott.

Mr. Veysey.

Mr. VEYSEY. Thank you, Mr. Chairman.

I want to commend my colleague from California, Mr. Talcott, for the approach he has made to this problem. You know, Mr. Chairman, in many ways Mr. Talcott and I share the two ends of maybe the same problem out there, because a lot of people who work in agriculture in his district part of the year work in agriculture in my district another part of the year. Some of the growers who grow in Mr. Talcott's district also grow in my district. So we tend to see some of the same people at different times.

But I sense that your approach to this problem differs from that of Mr. Sisk and Mr. McFall.

Mr. TALCOTT. If we can't do any better than Mr. Sisk and Mr. McFall—if we can't do better than that, I will go along with that, but I hope we can do better.

Mr. VEYSEY. I think it is important that you have this input to the committee. I think you made very strongly the point of the reason for a different type of treatment of agriculture and of the rest of industry; I think I lean in that direction and tend to agree with you.

But I am interested in the mechanism which you propose under which strikes and boycott procedures would be eliminated. How would that work?

Mr. TALCOTT. Well, I would hope that the people on the same team could solve their problems. It worries me that people supposedly working in the same direction cannot solve their problems in this day and age by talking together, mediation, negotiation; but obviously this may not happen, and so therefore I am simply suggesting that we change from the system we have now, which I think is barbaric and outmoded, and I think most people who think about it will agree. We try to eliminate wars for settling international disputes, and we cannot eliminate economic warfare to settle disputes of people on the same team in the same country.

I think we should aim to eliminate a strike that is injurious to everybody. The farmworker suffers most with the farm strike. The allied industries suffer. The community suffers. The consumer suffers. Strikes these days result in personal injury, property damage, intimidation, exacerbation of people; and they are bad, if they can be avoided.

I think in the present day and age, with economic information available to both sides, both sides equally represented legally and eco-

nomically and factually, that these decisions can be made. So what I am suggesting is a form of mediation and arbitration.

I suggest, in brief form, whenever there is a dispute between labor and management, whoever has the complaint should file a complaint and at the same time appoint a member to a board of arbitration and mediation. The other side then files a countercomplaint of some sort and appoints a member to this board. And then these two appoint three other people who are neutral, so they have a five-man board.

The function of the board would be to organize a settlement, and if they can do that in 30 days, fine. That is what we want, to organize a settlement. If they cannot organize a settlement within 30 days, then they publish—I think it is very important to publish—the circumstances.

The proposal of both sides should be published so everybody knows, the newspaper knows, the people on the street know, the people in the union know, and people on the employer's side know what is being talked about.

The trouble with our negotiation today is that it is all done in utter secrecy. You hear reports that they are close to a settlement, but nobody knows what the proposals are. I think if the public knew we would come to settlement quickly. So it is important that the negotiations be public, not secret.

After 30 days of secret meetings, negotiations, if they have not arrived at a decision, I think it should be publicized to everybody, so everybody has an opportunity to know. Then if after publication of the proposal on each side—the one that is most favorable to the other side—if they have not settled it within 5 days after that, then this board of arbitration will pick out the best proposal, not a compromise between the two, but the better of the two.

This is very important also because what is happening in our forms of negotiation today is that everybody is negotiating at extremes; they both propose extreme offers, knowing full well that somebody—the court, board of arbitration, the Congress, or somebody—is going to strike a compromise. So they negotiate from extremes.

I want to propose a way that the people will negotiate toward a reasonable settlement. If they know their settlement will be accepted or the other person's proposal is likely to be accepted because their's is not reasonable, I think they will be aiming toward reasonableness.

I think 30 days and 5 days is adequate time with the information we have available to us today, the computers and all. I do not think we need to take years and months to settle conflicts between people on the same team.

So this is generally my proposal. We can have collective bargaining. We can have unions. We can have secret ballots for union representation and organization. But just to strike—we ought to eliminate the strikes. It is just economic warfare, it is brutal, it is archaic, and it ought to be outlawed.

We should have the courage to provide legal mechanism to take its place. It used to be said the unions wanted to strike because it was their ultimate weapon. I don't believe it. I think Mr. Meany and other dedicated people to the union cause are seeing that strikes are more devastating to the worker than to anybody else, and we ought to

be civilized enough to develop a new mechanism for settling our disputes between people working on the same team.

My bill is very long. Generally, there is a lot of detail in it. It proposes to outlaw strikes and lockouts and secondary boycotts. It proposes establishment of a National Farm Labor Relations Board like the National Labor Relations Board, but a Farm Labor Relations Board because I feel there are so many differences between farming and manufacturing.

Just for instance, you cannot store farm products; you cannot have a strike and just inventory everything or warehouse it and wait, because it all spoils. Sometimes when you have a strike in the automobile industry, the inventory can appreciate in value while you are sitting around, but that does not happen in agriculture. It turns to garbage, and there is an enormous loss for everybody.

So there are so many differences. We depend on the exigencies of weather and market. There is little similarity between the manufacturing, transportation, building and construction industries, and farming. We ought to recognize those differences and have laws that apply specifically to each.

Mr. VEYSEY. I thank the gentleman from California for that further explanation of his bill. I think there are some very interesting ideas and concepts incorporated in that legislation. I hope that they will be fully studied and fully aired.

If I understand what you said at one point there, the real resolving mechanism is an arbitration selection of a kind of a "final offer" provision. Is that essentially the resolving mechanism?

Mr. TALCOTT. Yes. I do not pretend to have any panacea here. I have introduced this several years ago and several Congresses ago. I have circulated it broadly and asked for criticism and suggestions. I am confident that 10 years from now if you people are still on the committee you will be proud that there are no more strikes in this country.

This committee will be responsible for devising a better legal, civilized means for resolving disputes, so I am confident this idea will come to pass. I just wish it would come to pass sooner.

My proposal gives everybody an opportunity to make their own proposals. It is not forcing anybody. It is not brute force in action, and I do not think it should be brute force on either side.

I am glad we have unions. I am glad they made their contribution. But now we have to get a legal mechanism that settles these things without the devastating losses that are encountered every time we have a strike.

We had a strike on the docks in San Francisco causing farmers who were not involved in the strike to lose \$1 billion. This loss goes on to the consumer. I don't think there is any justification for that, if we find a better way out. And I think we can find a better way out. That is what I am proposing.

But I am not taking away the opportunities of people to study and analyze and evaluate and propose and recognize the other fellow's point of view and make proposals that are going to be helpful to both sides.

Mr. VEYSEY. I certainly share your hopes that we can find a better mechanism. That is what this Committee is looking for.

Mr. TALCOTT. I have confidence that the committee will come to this conclusion. I just wish, instead of being 10 years from now and being piecemeal legislation, a little this year and a little next year, that we could do something dramatic and important right away, so we could have the advantage of having it now rather than waiting for a couple of decades to get where we ought to be in a civilized society.

Mr. O'HARA. Thank you, Mr. Talcott.

I assure you we will give your bill full consideration.

I notice one of the unlawful practices that you establish—I am sure this was not your intent, but nevertheless, if I were Mr. Grayson Kirk, I would be worried about it—is “for any person to induce or encourage the ultimate consumer of any agricultural commodity without specifically identifying the producer of such commodity, where an objection thereof is to force, require, or persuade such ultimate consumer not to use such agricultural commodity * * *”

If I understand Mr. Grayson Kirk correctly, he has been urging us not to buy as much meat, and he has not identified any particular producer of that agricultural commodity.

Mr. TALCOTT. I suppose I may have to modify my language there. I am not a labor attorney. I sought the advice of as many people as I could, and as I suggested, I don't believe I have a perfect bill or a panacea.

Mr. O'HARA. None of us do.

Mr. TALCOTT. I come here pleading for the farmworker to get better mechanisms rather than as an expert or perfectionist in what I am doing. But I have some qualms about what is going on in the advertising business here in town about not buying meat. I don't have large cattle people in my district, but it seems passing strange to me that some of these big department stores who have been really exploiting poor people for a long time right here in this area—I can remember a couple of years ago when there was a story about a hijacking of a meat company's delivery to a chain store in town, so that it was advertised in the paper what the costs of the meat were when it came in the back door of this giant department store. Then I was able to compare what it was when it came out the front door, and the markup, the profit, the exorbitant profit that happened in that store for doing practically nothing to that meat except cutting off some of it and putting it in a package, was outrageous.

I wish somebody in the consumer business would have advertised what the chain stores did to the meat prices. The meat prices today are lower than they were 25 years ago, right today, when these people are advertising how high meat prices are.

If the committee will permit, may I have unanimous consent to provide some comparative prices between meat 25 years ago and meat today, and the chain store prices 25 years ago and today, and show who has got the enormous markup?

Mr. O'HARA. The Committee would be happy to receive such information. Without objection, the gentleman from California will be permitted to add an addendum to his statement, if he wishes to do so on that subject.

Mr. O'HARA. I would like to personally thank the gentleman from California for appearing before us. I can vouch for his longtime interest in the subject. He has been talking to me about it ever since

he came to Congress. I appreciate his willingness to appear before the committee and present his bill.

Mr. TALCOTT. May I thank you, Mr. Chairman. May I again, as cordially as I know how and as sincerely as I know how, invite you out to Salinas at your convenience, where the action is.

Mr. O'HARA. Salinas is a nice town. I remember many good times I had there.

Mr. TALCOTT. It is the hometown of John Steinbeck.

Mr. O'HARA. If we take out a traveling road show, Salinas would be one of the places I would want to visit.

Mr. TALCOTT. I don't want any road show, but, Mr. Chairman, the people who are out there—the farmworker, he cannot come here, I think you appreciate that, and he would like to be heard. I think there are several sides. This is not all black or all white, between the farmers or between the union people or between the Spanish-American people, between the workers, between their families. There is great division on this.

But for you and this committee to understand, I think you will get a lot better feel of the situation if you are there and talking to the people involved.

This is the area that is really causing this whole thing. This is where the strikes in the fields were. This is the place where the products are being boycotted. This is where Mr. Chavez was in jail. This is where the action is.

I think it would be beneficial to the committee and I will cooperate in any way I can to make it a productive meeting and not a road show.

Mr. O'HARA. Our final witness this morning is a member of the committee, Hon. Victor Veysey of California.

Mr. Veysey would you please go out front and assume the role of witness? I will question you both for myself and for you.

STATEMENT OF HON. VICTOR V. VEYSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. VEYSEY. Thank you very much, Mr. Chairman.

I do have a statement which I would like to have entered in the record of the committee. I would like to give you portions of that.

Mr. O'HARA. Without objection, your statement will be entered in full at this point in the record.

(The statement referred to follows:)

STATEMENT OF HON. VICTOR V. VEYSEY A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I want to thank you for calling this hearing today on the important subject of labor relations in agriculture. I am from California, a very important agricultural state. My District depends for its economic base on agriculture. The wages of agricultural workers, the profits of farmers, the expenditures of agriculture for equipment, fuel, fertilizer, and other supplies, support a highly developed economy. That economy produces the food needed in a hungry world.

But there is trouble because that agricultural economy is diminished in its ability to produce wages, profits, purchases of tools and supplies, and its ability to produce food. That trouble exists between agricultural workers and those who would be their spokesmen, the various union organizers and the owners and managers of the farms. There is a struggle; there has been ill will and violence. There is need for legislative guidelines.

Mr. Chairman, I know you are most sincere in going into this matter in this Committee. I know you want to get to the real problem, and to find workable answers. So I hope, Mr. Chairman, this Committee will extend this hearing to all of those who are able to come to Washington to testify. But even more important, I hope this Committee will go where the problem exists so that it may listen to farm workers who want to join unions and those who do not, to farmers who think they can work with unions and those who do not. Go to California, to Delano, to Salinas, to Coachella. Go to upper New York State, to Florida, to Texas, to Washington, to Colorado, to the great Mid West. Go where the problem is and listen to those closest to that problem.

Out of concern for the obvious damage being done to the agricultural economy of the nation, the state of California and my own Congressional District, I have introduced, last August, H.R. 10459. This is a balanced bill, a fair bill, a constructive bill designed to provide the sorely needed federal law governing agricultural labor relations. Now there is no law. The law of the jungle prevails. Workers are losing wages. Growers are losing their crop and their investment, consumers go short of desirable food products, and unions are locked in jurisdictional disputes without the means of resolving problems or determining representation except to resort to the unsavory secondary boycott.

Now, recent actions of the NLRB leaves the statuts of unions in agriculture even more nuclear. The Congress must make that clarification.

First and foremost, my legislation would guarantee secret ballots to all farm workers. It would assure that no union contract could be enforced without an actual vote, by secret ballot, of the legitimate workers who would be affected by the contract.

The labor movement has long embraced secret ballot representation elections, and has long championed the rights of the individual. Today, those who suggest that farm workers should not vote to determine their union affiliation are clearly placing their own self interest before that of the farm worker.

My legislation would also end the devastation of the secondary boycott. Such tactics as this secondary boycott have been outlawed for years in all labor relations covered by the National Labor Relations Act. This injustice of secondary boycotts has long been recognized by Congress as well as by labor leaders. Still, some farm labor organizers still insist that the secondary boycott is a legitimate tool for them, in the same breath that they suggest that farm workers should not vote on union representation.

Mr. Chairman, I firmly believe that those who oppose these two long-accepted ingredients in labor law . . . are more concerned about controlling the farm labor force than they are about helping farm workers.

My legislation would provide these two critical protections for the worker and the grower.

Basic to the thrust of my legislation is the establishment of a National Farm Labor Relations Board, separate and independent of the NLRB. It would parallel the NLRB in virtually every regard, with the one important difference being the recognition that agriculture has unique problems which require unique solutions.

The Farm Labor Relations Board would be equipped to handle those situations.

The most visible of all is the problem of perishability. A crop which is not harvested or moved from the field at a precise time is lost forever. With it goes not only the livelihood of the farmer, but also the jobs of the farm workers.

Under the NLRB in 1970, the median elapsed time from the date of the filing of a charge . . . the issuance of a Board decision, was 323 days. This figure is staggering to agriculture and points out more than any other single point the absolute necessity of a separate board to handle agricultural problems . . . a board made up specifically of individuals who understand intimately the problems of agricultural labor.

Further my legislation would contain a complete and clearly defined set of unfair labor practice regulations. It would prohibit sweetheart contracts . . . contracts signed between grower and union without the consent of workers. It would protect all workers rights to engage in organizational activity.

It would prohibit growers from discriminating against workers who take part in any union oriented effort . . . picketing or otherwise . . . and it would assure that farmers bargain in good faith with a union once the workers have legally chosen that union as their representative.

My legislation would cover more than 1/2 million farm workers in this country . . . over 45 percent of the entire farm labor force. At the same time, it

would apply to only two percent of the farms . . . only the largest ones. It will afford protection to those who need it so desperately, while allowing necessary flexibility at the union organizational level and at the farm production level, to settle labor disputes with a minimum of risk to all involved.

Mr. Chairman, H.R. 10459 is written to protect the individual rights of workers, consumers, and farmers alike.

These rights have been overrun during the past decade . . . because of the total absence of guidelines such as I am proposing.

During the past four years, as the farm labor strife grew more destructive because of the boycott . . . as unruly crowds of college students lined roadsides and sidewalks crying "Huelga" and "La Causa". . . we watched entire communities cut off from the market place. A store manager in Chicago, threatened by daily disruptions in front and inside of his market unless he takes grapes off the shelf . . . does the simplest thing. He removes the grapes and he is left alone and his customers are no longer scared away by intimidation. Grapes make up only a minute portion of his business. It is relatively painless for him to stop buying them.

Soon entire chains are avoiding grapes . . . for the same reasons.

Meanwhile, in the Coachella Valley in the heart of my Congressional District, entire communities are suffering. Many of these communities exist because they produce grapes for a few short weeks during late May and June. With the boycott on . . . and with no market for just a few days . . . the farms, the businesses, and the jobs, and in short—the communities' economic base—are all lost.

This scene has been repeated many times over during the past several years. Shippers, grocers, and eventually housewives are caught in the web of the jungle law which currently rules farm labor activities.

My legislation would restore order to an agricultural industry which today is reeling from labor strife. It would protect the right of every American to a freely accessible supply of food. It would eliminate coercion and intimidation of consumers, growers and all others in the food marketing chain.

HR 10459 embraces the concepts of time-tested labor law to guarantee these protections, while assuring effective collective bargaining in agricultural labor relations. I urge that this Committee take positive action to accomplish the aims of this legislation.

Mr. VEYSEY. I want to thank you for calling this hearing today on the important subject of labor relations in agriculture. I am, as the other gentlemen before me, from California, which is a very important agricultural State, and agriculture is most important in our economy.

My district depends for its economic base on agriculture. The wages of agricultural workers, the profits of farmers, the expenditures of agriculture for equipment, fuel, fertilizer, and other supplies support a highly developed economy there. That economy produces the food needed in a hungry world.

But there is trouble because that agricultural economy is diminished in its ability to produce these wages and profits and purchases of supplies, and it is diminished in its own ability to produce food. That trouble exists between agricultural workers and those who would be their spokesmen; that is, the various union organizers and the owners and managers of the farms.

There is a struggle; there has been ill will; there has been violence. There is need for legislative guidelines.

Mr. Chairman, I know you are sincere in going into this matter in this committee. I welcome the fact that we are now approaching the heart of the problem that I think this committee was established to undertake. I know you want to get to the real problem and to find workable answers.

I want to reiterate the invitation of my colleagues who have preceded me, that these hearings will be extended to permit all who might wish to testify here in Washington on the various legislative pro-

posals, but even more important, I hope that the committee will go where the problem exists, so that it may listen to farm workers who want to join unions and to those who do not, to farmers who think they can work with unions and to those who do not.

I would like to invite you to California. Of course, Salinas has been mentioned. Coachella Valley in my own district is another area where I think it might be appropriate for this committee to hold a hearing. But there are other portions of this Nation interested in and affected by this problem. Perhaps we should go to upper New York State, to Florida, and to Texas, even the great Midwest, go where the problem is and listen to those who are closest to that problem.

Out of concern for the obvious damage being done to the agricultural economy of the Nation, the State of California, and my own congressional district, I have introduced, last August, H.R. 10459. This is a balanced bill, a fair bill, a constructive bill designed to provide the sorely needed Federal law governing agricultural labor relations.

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First and foremost, my legislation would guarantee secret ballots to all farmworkers. It would assure that no union contract would be enforced without an actual vote, by secret ballot, of the legitimate workers who would be affected by the contract.

The labor movement has long embraced secret ballot representation elections, and has long championed the rights of the individual. Today, those who suggest that farmworkers should not vote to determine their union affiliation are clearly placing their own self-interest before that of the farmworker.

My legislation would also end the devastation of the secondary boycott. Such tactics as this secondary boycott have been outlawed for years in all labor relations covered by the National Labor Relations Act. This injustice of secondary boycotts has long been recognized by Congress as well as by labor leaders.

Still, some farm labor organizers still insist that the secondary boycott is a legitimate tool for them, in the same breath that they suggest that farmworkers should not vote on union representation.

Mr. Chairman, I firmly believe that those who oppose these two long-accepted ingredients in labor law are more concerned about controlling the farm labor force than they are about helping farmworkers.

My legislation would provide these two critical protections for the worker and the grower.

Basic to the thrust of my legislation is the establishment of a National Farm Labor Relations Board, separate and independent of the NLRB. It would parallel the NLRB in virtually every regard, with the one important difference being the recognition that agriculture has unique problems which require unique solutions.

The Farm Labor Relations Board would be equipped to handle those situations.

The most visible of all is the problem of perishability. A crop which is not harvested or moved from the field at a precise time is lost forever. With it goes not only the livelihood of the farmer but also the jobs of the farmworkers.

Under the NLRB in 1970, the median elapsed time from the date of the filing of a charge to the issuance of a Board decision was 323 days. This figure is staggering to agriculture and points out more than any other single point the absolute necessity of a separate Board to handle agricultural problems, a Board made up specifically of individuals who understand intimately the problems of agricultural labor.

Further, my legislation would contain a complete and clearly defined set of unfair labor practice regulations. It would prohibit sweetheart contracts—contracts signed between grower and union without the consent of workers. It would protect all workers' rights to engage in organizational activity.

It would prohibit growers from discriminating against workers who take part in any union-oriented effort—picketing or otherwise—and it would assure that farmers bargain in good faith with a union, once the workers have legally chosen that union as their representative.

My legislation would cover more than one-half million farmworkers in this country, over 45 percent of the entire farm labor force. At the same time it would apply to only 2 percent of the farms—only the largest ones. It will afford protection to those who need it so desperately, while allowing necessary flexibility at the union organizational level and at the farm production level, to settle labor disputes with a minimum of risk to all involved.

Mr. Chairman, H.R. 10459 is written to protect the individual rights of workers, consumers, and farmers alike.

These rights have been overrun during the past decade because of the total absence of guidelines such as I am proposing.

During the past 4 years, as the farm labor strife grew more destructive because of the boycott—as unruly crowds of college students lined roadsides and sidewalks crying “Huelga” and “La Causa”—we watched entire communities cut off from the marketplace.

A store manager in Chicago, threatened by daily disruptions in front and inside of his market unless he takes grapes off the shelf, does the simplest thing. He removes the grapes and he is left alone, and his customers are no longer scared away by intimidation. Grapes make up only a minute portion of his business. It is relatively painless for him to stop buying them.

Soon, entire chains are avoiding grapes, for the same reasons.

Meanwhile, in the Coachella Valley in the heart of my congressional district, entire communities are suffering. Many of these communities exist because they produce grapes for a few short weeks during late May and June. With the boycott on—and with no market for just a few days—the farms, the businesses, and the jobs, and in short, the communities' economic base, are all lost.

This scene has been repeated many times over during the past several years. Shippers, grocers, and eventually housewives are caught in the web of the jungle law which currently rules farm labor activities.

My legislation would restore order to an agricultural industry which today is reeling from labor strife. It would protect the right of every American to a freely accessible supply of food. It would eliminate coercion and intimidation of consumers, growers, and all others in the food marketing chain.

H.R. 10459 embraces the concepts of time-tested labor law to guarantee these protections, while assuring effective collective bargaining in agricultural labor relations. I urge that this committee take positive action to accomplish the aims of this legislation.

Mr. O'HARA. Thank you very much, Mr. Veysey.

I have noted that your bill and Mr. Talcott's bill do have a number of features in common and also a number of things you do not do quite the same way.

One of those features that you do have in common that I have been particularly interested in is the definition of agricultural employee to mean any employee who is employed in agriculture by a particular agricultural employer and who has been so employed for at least 15 working days during the preceding 30 calendar days. In other words, to meet the definition of employee, you would have had to work for that particular employer, particular grower, for 15 days out of the last 30 calendar days. Is that right?

Mr. VEYSEY. That is correct, Mr. Chairman.

Mr. O'HARA. Wouldn't that exclude quite a bit of the casual or migrant labor?

Mr. VEYSEY. Well, it clearly would exclude the possibility of a large number of people moving into employment for a given employer on the day of election in which determination is made as to representation and thus voting in that election and making that decision.

Fifteen days is not a very long working period, I think you would agree. I don't know that 15 days is the right number. But I think there should be some reasonable figure placed in the bill which would not be overly long so as to limit the effect of the legislation only to those who are year-round, you might say, agricultural employees of that employer (and I think there would be some that would be in that category), and also not to leave it open to those who just present themselves for 1 day and work for that employer as being the determinants of that decision for all time.

Mr. O'HARA. I am approaching the subject with an open mind, but it seems to me that 15 days out of the last 30 might take you quite a bit—at least for some kinds of crops—toward the idea of just having the year-round people considered employees.

I am going to look at it. I don't know if it does or does not.

Mr. VEYSEY. I suggest the 15 days is a long way from year round. I don't know that 15 is the right number.

Mr. O'HARA. I mean, for some employers at least, there would be very few of their seasonal employees who would meet that qualification, even though it does not say year-round, which would leave their year-round employees who did meet the qualification and maybe a few of their seasonal employees.

Mr. VEYSEY. You may be correct. My own impression, as I know agriculture being practiced in my area, in my State, is that that probably would not generally be true. The tendency has become

much more to have pretty well fixed crews who work the season for one employer.

But there might be some situations in which that would not work, and I would want to alter it to match that condition.

Mr. O'HARA. I note both you and Mr. Talcott set up your definitions in such a way that the crew leader would be an employer for the purposes of the act, and his employees would not be the employees of the grower. Is that correct?

Mr. VEYSEY. Yes. That is essentially correct. I think in agriculture we do have this unique situation of crew leaders or contractors in the gap between the agricultural worker and the agricultural employer.

Mr. O'HARA. Mr. Veysey, I am sure you and I are going to have many opportunities to discuss this matter at great length, and I am not going to take more of your time this morning. But I do wish to thank you and to suggest that you are among the most knowledgeable of those who have come to Congress with respect to this particular subject, and certainly your views are entitled to the gravest consideration and great weight.

I am pleased that you are a member of the subcommittee, where we can have the advice and counsel that you can give us from your experience.

Mr. VEYSEY. Thank you. I am delighted to have the opportunity to serve on this subcommittee and work in this important area.

I am sure we will, after careful consideration, be able to come to some suitable solution to the problems before the subcommittee.

Mr. O'HARA. Thank you very much.

The subcommittee will now stand in adjournment, and we will meet next following the recess, to hear from other members.

(Whereupon, at 11:15 a.m., the subcommittee recessed, to reconvene at the call of the Chair.)

AGRICULTURAL LABOR-MANAGEMENT RELATIONS

THURSDAY, APRIL 27, 1972

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

The subcommittee met at 10 a.m., pursuant to call, in room 2257, Rayburn House Office Building, Hon. James G. O'Hara (chairman of the subcommittee) presiding.

Present: Representatives O'Hara, Quie, and Steiger.

Staff members present: Jim Harrison, staff director; A. C. Franklin, counsel; Elnora Teets, clerk, and John C. Miller, minority associate counsel for labor.

Mr. O'HARA. The Subcommittee on Agricultural Labor of the Committee on Education and Labor will come to order.

The purpose of our meeting today is to continue our hearings on labor-management relations in agriculture and on the numerous bills that have been introduced on that subject, including H.R. 5010, H.R. 5281, H.R. 12486, H.R. 13981, H.R. 1689, H.R. 10459, and H.R. 2546, H.R. 1410, H.R. 1523, H.R. 3571, and H.R. 4438, H.R. 3625, and H.R. 10445. That may give you some notion of the idea that there are several different approaches that are being advocated.

Our first witness today will be the Honorable Charles M. Teague, a Member of the House from the 13th District of California. Mr. Teague, we would be very pleased to hear your comment on this topic.

STATEMENT OF HON. CHARLES M. TEAGUE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. TEAGUE. Thank you, Mr. Chairman. I am Congressman Charles M. Teague of the 13th Congressional District of California. I come from an area in southern California which is still rather largely dominated by agriculture. Our principal crops are lemons, oranges, avocados, field crops of all kinds—most all kinds—as well as a cattle industry. None of these fall under the farm subsidy programs.

I feel fortunate, and I think most of my farmers deserve a great deal of credit, because we have not had a great deal of trouble in the farm labor field. I think this is because, with some exceptions, some few exceptions, our farmers in my two counties, Ventura and Santa Barbara, have provided adequate housing, living up to and exceeding the California building codes, which are strict.

Many of them, including those with which my family is associated, provide vacations, even for those working for hourly wages. They pro-

vide and pay for, entirely out of company funds, health insurance programs. They provide buses to take people to town if they want to go to night school, and provide numerous other fringe benefits.

I think probably if this were done throughout the country, we would not have this labor strike program that we do. Nevertheless, we do have it in some areas, and it is a most serious problem.

I always like to remind people who do not know—although I realize you, Mr. Chairman, and members of your staff and certainly Mr. Ullman do—there is a big difference between a strike in an automobile factory and one on a strawberry farm. If an automobile factory is closed down for 2 or 3 months, the company is going to survive and probably most of the employees will be back to work and will, hopefully, be taken care of either on welfare or out of union funds in the meantime.

But if a small or large strawberry farmer has a field of strawberries ready to be picked, they have to be picked that day or the next day or within 2 or 3 days or they are gone. He has lost a whole year's income and possibly gone bankrupt. This applies as well to several other types of perishable food products.

So I think there is a real need for realization that this is a separate problem and, hopefully, could be more effectively dealt with by a separate agency as is proposed in the Quie-Ullman-Leggett-Teague bill, which is one of those mentioned by you, Mr. Chairman, and which will be considered by the committee.

I won't attempt to discuss the bill in detail. Mr. Quie, I am sure, has or will do that for you. But I do want you to know that I appreciate being invited and I think this is a serious problem which does deserve some action on the part of this subcommittee and the Congress as a whole.

Mr. O'HARA. Mr. Teague, thank you very much. Let me just chat with you for a few minutes about the seasonality problem, which is one that you have mentioned specifically one that is, I think, one of the most difficult problems that we face. Let us not talk about it in terms of any bill, but let us talk about the problem in general.

It is perfectly true that harvest work has a high degree of seasonal need in it. Obviously you know the subject very well, and you are absolutely correct when you say if you do not harvest the perishable crop during the time when it must be harvested, you may lose the crop and, if you lose the crop, you may have lost the major income-producing factor on your farm.

Of course, there are some other seasonal industries that are covered by the National Labor Relations Act. You have collective bargaining and strikes and so forth that are permissible, although they occur very seldom, for instance, in canneries. Many of them are covered by collective bargaining agreements, and the cannery is in much the same situation the farmer is. That is, when the produce arrives there, it cannot be left around for weeks and months before it is canned, or somehow processed.

They have managed somehow to overcome those problems in the seasonal industries that are covered. I think that we have to somehow balance equities here, because likewise the work is seasonal. If we were

to say to a farmworker who is employed only during harvest time, "You cannot strike during the harvest season; you cannot take part in a work stoppage during the harvest season"—which may be the only time he is employed—when can he have any bargaining power if he cannot have it in the harvest season?

Mr. TEAGUE. I think the answer to that is that the—let us call it the Quie bill for simplicity—does provide for advance notice which can be given in advance of the expected harvest date. But, again, I am fortunate in my own congressional district—I don't want to diverge too much from your statement—in my two counties. We can offer almost year-around employment, at least 10 months and sometimes 11 months.

For instance, they pick lemons every month out of the year. There are two or three varieties of oranges that come off—winter oranges and summer oranges. You have avocados and winter vegetables as well as summer vegetables; so, in southern California, we have a peculiar situation where we can and do provide almost year-around employment.

But I think, to get back to your original question, that I suppose the only answer is that certainly the bill not only does not oppose organizing farm labor but provides that it can and really, in effect, should be organized. And, if there is an organization of farmworkers and they know that the peach-picking season will begin in the middle of August and that they have not reached an agreement with their employees by that time, under the bill, as I recall, there is a requirement that they give notice and you have a period of arbitration in which to try to work out the differences, so it does not come as an overnight surprise and disaster to the farmer.

Mr. O'HARA. I think that there is a problem there that we have to face honestly and try to come to grips with, but I also note that the strikes during harvesttime that have occurred, have occurred in connection with organizational efforts rather than in connection with work stoppages that have taken place at an employer who has a collective bargaining agreement. Ordinarily the collective-bargaining agreement will have a no-strike provision in it.

So most often these work stoppages at harvesttime occur in connection with organizational efforts rather than in connection with operations that are already organized. Isn't that your understanding?

Mr. TEAGUE. That is my understanding, and I think that is an unfortunate situation. It would be cured by a secret ballot provision, a secret vote provision in the Quie bill.

Mr. O'HARA. Mr. Teague, I appreciate very much your coming before us and giving us the benefit of your experience in these matters.

Mr. Steiger, do you have any questions you would like to ask?

Mr. STEIGER. I will pass for the moment and thank our colleague from California.

Mr. TEAGUE. Thank you Mr. Chairman.

Mr. O'HARA. Thank you very much.

Our next witness will be the Honorable Al Ullman, a Member of the House from the Second District of Oregon. Mr. Ullman, please be seated.

STATEMENT OF HON. AL ULLMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. ULLMAN. Thank you very much, Mr. Chairman. I appreciate this opportunity. I will be brief. I would appreciate my testimony being in the record, and I will make some supplemental comments.

Mr. O'HARA. Without objection, your testimony will be entered in full at this point in the record.

(The statement referred to follows:)

PREPARED STATEMENT OF HON. AL ULLMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. Chairman, as a cosponsor, I appear before you this morning in support of H.R. 13981, The Agricultural Labor Relations Act of 1972. I believe it is essential that the Congress devise adequate mechanisms to deal with disputes in the field of agricultural-labor relations, and am pleased that you have taken up this important issue.

Some proposals that you are considering provide for the inclusion of agriculture under the National Labor Relations Board. In my judgment, this is not desirable. The NLRB already has a heavy caseload, often resulting in long delays. In agriculture, it is essential that disputes be resolved in timely fashion. Because of the peculiar nature of agriculture as distinct from all other forms of employment now covered by the NLRB, I believe that we should have a separate board of persons experienced in agriculture and labor relations.

H.R. 13981 establishes an independent Agricultural Labor Relations Board, composed of three members and a General Counsel all appointed by the President and subject to confirmation by the Senate. This separate board will allow a time framework—prompt resolution of disputes—that is essential in agriculture, and will promote the development of specialized expertise in agriculture on the Board.

There are three main objectives of this legislation. First, it will provide farm employees the opportunity to organize and be represented in collective bargaining by people of their own choosing. Second, it will provide a framework for the protection of the public interest in the event of labor disputes in the field of agriculture, thus insuring that agricultural products will be readily available in the nation's markets. Third, farm employers will be protected from certain unfair labor practices, and can bargain with legitimate labor organizations representing their employees.

Labor disputes in agriculture must be regulated, and I believe that most of us agree with this. The problem we address today is how best to structure that regulation. Increasing organizational activity among employee groups and unions representing farm employees have brought about increasing misunderstandings leading to strikes, boycotts, wage disputes, as well as charges of unfair practices and shabby treatment of workers. Everyone has a strong interest in minimizing such activities by providing an orderly procedure for the resolution of disputes between farmers and farm employees.

It is certainly my intention that the definition of employees covers migrant workers, and address the serious problems they have faced. If this omission were made, the bill would be of little value. The Board would have jurisdiction over employers who use 500 man-days of labor during any calendar quarter of the preceding calendar year. This is the same standard that applies to agriculture under the Fair Labor Standards Act.

Mr. ULLMAN. Mr. Chairman, in my judgment, these are very important hearings that you are holding, and I appreciate the opportunity to appear here.

As you have indicated, there are many approaches to the problem. I think that the hearings themselves indicate that you feel and the committee feels that action must be taken in this area. I would agree.

But I want to make a strong plea for the concept involved in H.R. 13981, which would set up a separate Agricultural Labor-Relations Board, which, I think, is rather fundamental to the unique situation that we find in agriculture.

I have one of the large agricultural districts in America. We have primarily small family farms and very little in the way of corporate agriculture. A continuation of existing policies would, in my judgment, lead to chaos in the industry.

On the other hand, I would not support in any way inclusion of agriculture under the National Labor Relations Board, because, in the first place, I think that the Board already has an overcrowded schedule. In the second place, I think the uniqueness of agriculture is such that you cannot apply to agriculture the same rules that you apply to industry generally. I think if you attempted to do so, the Board would find itself bogged down in complexities that it could not cope with.

So I urge that you seriously consider the concept incorporated in this bill. The bill generally follows the rules of the National Labor Relations Board, but it has been carefully drafted to amend those rules in areas where agriculture has special and particular problems.

Let me go through very briefly some of these special circumstances. I would refer first to a chart that has been prepared by staff, indicating the substantive differences between the National Labor Relations Act and the proposed Agricultural Labor Relations Act with three columns, the first being NLRA, second being ALRA, and then some particular comments. I will make this copy available to the committee. But I think it indicates clearly that generally the pattern of the bill follows the provisions of the National Labor Relations Act.

SUBSTANTIVE DIFFERENCES BETWEEN THE LABOR-MANAGEMENT RELATIONS ACT AND PROPOSED AGRICULTURAL LABOR BILL

ALRA

COMMENTS

1. *Definition of Employer:*

The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any [wholly owned Government corporation, or any] Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor [organization (other than when acting in the] capacity of officer or agent of such labor organization.

2. *Definition of Agriculture:*
No comparable provision.

Sec. 2. (3) The term "employer" shall mean any employer engaged in agriculture who employed more than 500 man days of agricultural labor during any calendar quarter of the preceding calendar year.

Agricultural bill uses the 500 man days standard currently in effect in the Fair Labor Standards Act.

Sec. 2. (4) The term "agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

Agriculture definition is the same as that utilized in Sec. 3(f) of the Fair Labor Standards Act.

3. *Rules and Regulations:*

Sec. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

Sec. 6. (a) The Board shall have authority from time to time to make, amend and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act: PROVIDED, That within one hundred and eighty (180) days of the effective date of this Act, the Board shall publish in the Federal Register a general notice of proposed rule-making with regard to the standards, criteria or policy to be applied in cases involving section 9 of the Act, including but not limited to the issues of the unit appropriate for purposes of collective bargaining, [the eligibility of employees to vote in elections,] and the circumstances under which a question of representation exists. Such a proposed rule-making shall be governed by section 553 of title 5, United States Code.

4. *Jurisdictional Conflict:*

No comparable provision.

Sec. 6. (b) The Board shall have exclusive jurisdiction, authority and responsibility with respect to agricultural employees, agricultural employers, and labor organizations representing or seeking to represent agricultural employees covered by this Act.

In the event a question arises as to whether this Board or the National Labor Relations Board has jurisdiction over a particular labor dispute, the General Counsel of this Board shall consult with the General Counsel of the National Labor Relations Board on such matter and shall thereafter make a determination as to

Additional language in the Agricultural bill requiring the Board to publish in the Federal Register rules with respect to the standards, criteria or policy to be applied in representation cases (section 9 of the Act—election and certification).

The Secretary of Labor determines jurisdiction in the event of a conflict between the NLRB and the ALRB.

whether this dispute is properly within the jurisdiction of this Board. In the event of disagreement over jurisdiction, the General Counsel of either Board (or both) may file a petition for Determination of Jurisdiction with the Secretary of Labor. Concurrently, or within ten days after the filing of such single or joint petition, the respective agencies may file a memorandum supporting their positions. Within ten days after such supporting memorandums have been or could have been filed, the Secretary of Labor shall determine the question of jurisdiction and his decision shall be final.

Sec. 8. (a) (3) It shall be an unfair labor practice for an employer—by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of the Act as an unfair labor practice) to require as a condition of employment *membership therein on or after the seventh day* following the beginning of such employment or the effective date of such agreement, whichever is the later (i) if such labor organization is the representative of the employees as provided in section

5. *Employer Unfair Labor Practices:*
(a) Sec. 8. (a) (3) It shall be an unfair labor practice for an employer—to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment *membership therein on or after the thirtieth day* following the beginning of such employment or the effective date of such agreement, whichever is the later,

Employer Unfair Labor Practices (a) Sec. 8(a) (3) : LMRA and Agricultural bill contain identical language in their respective 8(a) (3) section *except* that the Agricultural Labor bill permits a 7 day union compared to a 30 day provision in LMRA. It is however, comparable to the 7 day provision for workers in the construction industry. (Distinctions italicized)

(i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

Balance of language identical.

(b) No comparable provision.

(c) No comparable provision.

6(a) Sec. 8(b) (7) It shall be an unfair labor practice for a labor organization or its agents—to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement;

Sec. 8. (a) (6) It shall be an unfair labor practice for an employer—to lock out employees in violation of the requirements of section 13;

Sec. 8. (a) (7) It shall be an unfair labor practice for an employer—to knowingly employ as an employee any alien who is in the United States in violation of law. Language is identical through clause (B).

(b) Sec. 8(a) (6) : Makes it an unfair labor practice for an Employer to lock out employees without fulfilling the requirements of Sec. 13.

Self-explanatory.

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act.

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c) (1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such

The first portion of clause (C) has been deleted. Nothing in paragraph (7) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services, or permit any act which would otherwise be an unfair labor practice under subsection (b); and

Deletes the first portion of subparagraph (C) dealing with picketing without a representation petition being filed. The intent is to ban organizational picketing but permit informational picketing except where it has the effect of disrupting deliveries or service.

picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

6(b). No comparable provision.

Sec. 8(b) (8) It shall be an unfair labor practice for a labor organization or its agents—to engage in any strike or picketing in violation of section 13(b) : *Provided*, That nothing herein shall be construed to make lawful any strike or activity which is made unlawful by any other provision of this Act.

Language identical through paragraph (2) on page 6.

The Agricultural bill deletes paragraphs (3) and (4) and incorporates references to section 13(b). The two paragraphs deleted refer to notification of the Federal Mediation Service about the existence and require continuance of the terms of the contract for 60 days after notice is given or until the expiration of the contract whichever is later. These sections are replaced by Section 13. An employee who strikes in violation of section 13 loses his "status" as an employee under the Act.

7. Sec. 8(d) It shall be an unfair labor practice for an employer—for the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

SUBSTANTIVE DIFFERENCES BETWEEN THE LABOR-MANAGEMENT RELATIONS ACT AND PROPOSED AGRICULTURAL LABOR BILL--Continued

(1) serves written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of existence of a dispute, and simultaneously there-with notifies any State or territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after each notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification

Language identical.

Paragraphs (3) and (4) deleted.

The duties imposed upon employers, employees, and labor organizations by paragraphs (1) and (2), above and Section 13(b) shall become inapplicable upon an

of the Board, under which the labor organization or individual which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of section 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

8. No comparable provision.

intervening certification of the Board, under which the labor organization or individual which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike in violation of this subsection (d) or section 13(b) shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Sec. 8(f) It shall not be an unfair labor practice, under subsection (a) and (b) of this section for an employer to make an agreement covering employees (or individuals who upon employment will be employees) with a labor organization of which employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because such agreement requires the employer to notify such labor organization of opportunities to refer qualified applicants for such employment, so long as such agreement conforms

Sec. 8(f) in Agricultural Labor bill (ALB) permits an employer to make an agreement that he will notify the Union of job opportunities as long as such agreement complies with regulations of the Board which insure nonexclusive and non-preferential use. It further requires maintenance of records and reporting of such operation to the Board.

to rules, to be promulgated by the Board, which insure nonexclusive and nonpreferential use of the arrangement and which may provide for the maintenance of records and for reporting of the operation of such arrangement to the Board: PROVIDED, That nothing in this subsection shall set aside the final proviso to section 8 (a) (3) of this Act.

Sec. 9(a) (1) Identical with LMRA with the following additional language:

9. Sec. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

Opposite language identical.

(Additional language.)

(2) An employer shall be required to recognize and bargain with a bargaining representative when that representative has been selected, in a secret ballot elec-

An employer is only required to bargain when a union is selected by a secret ballot election by the ALB *except* where a union's majority has been dissipated by

tion, by a majority of the employees in an appropriate unit pursuant to subsection (c) of this section: *Provided*, That the Board may order an employer to bargain with a labor organization, after a secret ballot election has been completed resulting in a vote against representation by that labor organization, but only where it determines that (A) prior to the date upon which the election was held, a majority of the employer's employees had clearly and freely designated such labor organization as its representative; and (B) pursuant to proceedings under section 10, the employer has committed aggravated violations of section 8; and (C) such aggravated section 8 violations directly resulted in the defeat of the labor organization in the secret ballot election; and (D) the effect of such section 8 violations is so extraordinarily serious that such effect will continue, notwithstanding any other remedy ordered by the Board, to the extent that a fair election could not possibly be conducted within a reasonable period of time.

Sec. 9(b) Identical language except that "establishment unit" substituted for "plant unit".

Sec. 10(1) (1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of sec-

aggravated employer unfair labor practices which preclude the holding of a fair election. In such instance the Board may require an employer to bargain without the union winning an election. This latter provision incorporates the holding of a Supreme Court decision interpreting the LMRA.

The term "plant unit" was deemed inappropriate for the agriculture industry and "establishment unit" was substituted therefore.

Agricultural bill is identical to LMRA provision except that the provision for expeditious handling of charges and the

10. Sec. 9(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:

11. Sec. 10(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of para-

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graph 4 (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.

tion 8(a) (6) or paragraph 4 (A), (B), or (C) of section 8(b), or section 8(e), or section 8(b)(7), or section 8(b)(8), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is referred.

The rest of 10(1) (1) is identical to the LMRA language.

12. No comparable provision.

Sec. 10(1) (2) Whenever it is charged that any person has engaged in an unfair labor practice involving an employee or an employer within the meaning of section 8(a) (6), 8(a) (7), 8(b)(4), 8(b)(7), 8(b)(8), or 8(e), the charging party may, after having filed his charge with the Board, petition, in the name of the Board, in any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for an appropriate temporary restraining order. Upon the filing of such a petition, alleging that irreparable injury to the charging party will be unavoidable, the district court shall have jurisdiction to grant such temporary restraining order as it deems just and proper without notice and notwithstanding any other provisions of law. Such a temporary restraining order shall be effective for no longer than ten days and will become

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authority to seek temporary injunctions was expanded to include new sections, Sec. 8(a) (6) and Sec. 8(b) (8).

ALB provides that a charging party may petition for a temporary restraining order (TRO) where irreparable injury alleged. Only a 10 day TRO can be granted and cannot be renewed *except* on petition of the Board.

void at the expiration of such period. No extension of such temporary restraining order may be granted except upon application by the Board as provided below. Immediately upon the filing of such charge, the Board's preliminary investigation shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, within a period not to exceed ten days from the date of filing of the charge, enter the pending district court action upon the petition filed above or upon an amended petition. Upon entry of the Board and its application therefor, the district court shall have jurisdiction to grant such injunctive relief as it deems just and proper, notwithstanding any other provision of law. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (A) in the district in which such organization maintains its principal office, or (B) in any district in which its duly authorized officers or agents are engaged in promoting or pro-

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protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit.

13. No comparable provision.

Sec. 13(b) (1) With respect to a bargaining unit, no employer shall engage in a lockout involving employees nor shall a labor organization recognized as the representative of employees pursuant to section 9 engage in or induce or encourage any individual or any other labor organization as defined in this Act or in the National Labor Relations Act, as amended, to engage in any strike, picketing or similar activity without giving the opposing party 20 days written notice (by personal service, or by certified or registered mail requesting a return receipt) of its intention to do so, which notice shall be effective for 12 months.

14. No comparable provision.

Sec. 13(b) (2) Any party receiving a notice of intent under paragraph (1) of this subsection may invoke a 40-day period of mediation by giving written notice thereof (by personal service or by certified or registered mail requesting a return receipt) at any time during the 12-month effective period of the opposing party's notice of intention. Any such notice of mediation shall be served upon the opposing party, the Federal Mediation and Conciliation Service, and the Board. The 40-day period shall commence at the end of

ALB prohibits a lockout by an employer or a strike, picketing or similar activity by an individual or a labor organization without giving the opposing party a 20 day notice by personal service or certified or registered mail.

ALB authorizes invoking a 40 day period of mediation during which a strike or picketing or lockout is prohibited. Requires notice be sent to the opposing party, the Federal Mediation Service and to the ALRB. Only one mediation period can be invoked in a 12 month period.

the 20-day notice of intention period, or immediately upon receipt by the opposing party, whichever is later: *Provided*, That any party which has received a notice of intention may invoke only one such 40-day period with respect to each bargaining unit during the 12-month period following receipt of that notice of intention, or the remaining term of a collective bargaining agreement covering that unit, whichever period is shorter.

15. No comparable provision.

Sec. 13 (b) (3) Immediately upon receipt of such notice by it, the Federal Mediation and Conciliation Service shall assign a mediator to assist in the resolution of the dispute. If after 20 days from the commencement of the 40-day period the parties have not resolved the dispute the Federal Mediation and Conciliation Service shall furnish the parties with a list of five names (excluding all regular employees of the United States Government) from which the parties shall choose a Special Referee under procedures provided by the Federal Mediation and Conciliation Service. The Special Referee shall proceed to hear the dispute in accordance with rules and regulations promulgated by the Federal Mediation and Conciliation Service for such cases and shall, not later than five days before the end of the 40-day period recommend a collective bargaining agreement with respect to rates of pay, hours of employment, and other conditions of employment. If the dispute is not otherwise resolved by the parties, such recommendation shall be binding upon the invoking party if accepted by the other party before the 40-day period expires.

AIB requires Federal Mediation Service to assign a mediator immediately upon receipt of notice of the invocation of mediation period to assist in resolution of dispute. After 20 days of the 40-day period have expired the Mediation Service shall furnish the parties a list of 5 names from which the parties shall select a special referee. The Special Referee is authorized to hear the dispute and five days before the end of the 40-day period recommend a collective bargaining agreement. Such recommended contract is binding upon the invoking party if accepted by the other party before the 40-day period expires.

SUBSTANTIVE DIFFERENCES BETWEEN THE LABOR-MANAGEMENT RELATIONS ACT AND PROPOSED AGRICULTURAL LABOR BILL—Continued

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16. No comparable provision.

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Sec. 13 (b) (4) No party shall lockout, strike, or engage in any similar activity during the 20-day notice of intention period provided in paragraph (1) of this subsection, or the 40-day mediation period provided in paragraph (2) of this subsection: *Provided*, That where a party, having given a notice of intention required by paragraph (1) of this subsection and having awaited the expiration of the 20-day period there provided, is engaged in a lockout, strike, or similar activity which does not otherwise violate this section 13, such activity shall not be rendered unlawful by the filing of a subsequent notice of intention under paragraph (1) of this subsection by another party.

17. No comparable provision.

Sec. 13 (b) (5) Any Special Referee shall be entitled to receive compensation at a rate specified at the time of actual service for grade GS-18 in section 5332 of title 5, United States Code, including travel time and shall be allowed travel expenses, including a per diem allowance in accordance with section 5703 (b) of title 5, United States Code, when engaged in the performance of mediation services.

18. No comparable provision.

Sec. 13 (b) (6) A recommendation of a Special Referee, which has become binding on the parties under the provisions of paragraph (3) of this subsection, shall be deemed a contract between an employer and a labor organization as that term is used in section 301 of the Labor-Management

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ALB provides for no strike or lockout during either the 20 day notice period or the 40 day mediation period, however, if a party strikes (or locks out) after the 20 day period where no mediation period is invoked, such activity shall be lawful even though a subsequent notice of intent is filed by another party.

Self-explanatory.

A recommended contract by a referee which has become binding on the parties is deemed a contract as defined by Sec. 301 of LMRA.

ment Relations Act of 1947. Such a recommendation shall be conclusive unless found by a court of competent jurisdiction to be arbitrary or capricious in which case it shall be set aside. The commencement of an action seeking judicial review of such a recommendation shall not, unless otherwise ordered by a court of competent jurisdiction, operate to stay the application of the recommendation.

Sec. 14(c) (3) The Board is authorized and directed to administer and apply the provisions of this Act with due regard to the special characteristics of agriculture and employment in agriculture.

Its intent is not to make any precedents by the NLRB binding upon the ALRB in its interpretation and application of this Act.

Mr. ULLMAN. Because of the 8- or 9-month season for agriculture, including critical short-term harvest periods, timetables for injunctive relief, notice of intent to strike or lockout, and mediation periods must be of shorter duration than in other industry. Section 13 of the bill provides for 20-day notice of intent to strike, rather than the customary 60-day notice under the National Labor Relations Act. Temporary restraining orders can be issued for a 10-day period.

A mediation period of 40 days may be invoked by either party by giving written notice at any time during the 12-month period after notice of intent to strike. The Federal Mediation Service would then assign a mediator to the dispute. After 20 days of no settlement, the Service shall provide a list of five names from which the parties shall select a special referee.

The referee shall, by the 35th day of the 40-day mediation period, recommend a collective bargaining agreement. If the agreement is accepted by the other party, it is binding on the party who invoked mediation.

To summarize briefly, I believe that this bill meets the basic needs of the farm employee for organizing and being represented in collective bargaining and for protection from discharge or discrimination for engaging in union activity. The employer would be able to rely on orderly election procedures and act to prevent unfair labor practices. The public interest in having a ready supply of agricultural goods should also be protected by this mechanism.

In short, in my judgment, this bill provides the best framework for resolving strikes and disputes in the agricultural industry.

It is important that we do provide a mechanism for the organization of farmworkers. I think we have come to that point. The disruption that we have seen in recent years and indications of what might come in the future, I think, mandate that we do provide a sound mechanism for the organization of farmworkers.

I think also that the consumer is going to demand orderly procedures for the organization of farmworkers to avoid the strikes, the lockouts, the kind of thing that we have had disrupting the supply of goods into the marketplace.

The unique character of agriculture, however, I think, demands that we provide a mechanism tailored to the farm problems, and this includes migrants. I think certainly under any circumstances we must include migrant labor in this whole collective bargaining process. I think that we in Congress would be making a serious mistake to think that the National Labor Relations Board rules could cope with the problem of agriculture. I am positive in my own mind that they could not.

This vehicle that we have put together in this bill, in my judgment, could allow for the organization of the farmworkers in an orderly manner. It is a fair attempt to balance out the bargaining process between the worker and the farmer.

In my judgment, it would receive the support of the vast majority of farmers in the country, even though they recognize that it would facilitate the organization of farmworkers, which they are willing to accept if the rules are fair, and we think these rules are fair. Thank you, Mr. Chairman.

Mr. O'HARA. Mr. Ullman, thank you very much. Mr. Steiger, do you have any questions you would like to direct to Mr. Ullman?

Mr. STEIGER. Should we, in your judgment, do something this year? Have we reached the point at which it is important that we move expeditiously to take some action in this field?

Mr. ULLMAN. Well, the gentleman has had a lot of legislative experience and knows the problems of shaping sound, long-range legislative proposals in a campaign year. I personally want the committee to proceed as expeditiously as, in its own judgment, it thinks that it can under the circumstances.

I would think that it might be possible to get this kind of legislation enacted this year, but certainly if there were some indication that the pressures of a political year were such that we could not get a sound bill, then I would want to wait until we could enact the right approach to the problem rather than a political approach to the problem.

Mr. STEIGER. I appreciate your candor in answering that question, and it is a difficult time within which to act.

I think it is interesting and very valuable to have the perspective of yours as one who does represent an important farm area and who has had to deal with this kind of problem. I am grateful for your testimony.

Mr. ULLMAN. I think it is interesting that the family farmers in my area—and that is about all I have—are supporting a program that would lead inevitably to the organization of their farmworkers. I think this is a great step forward. I think it is a recognition that if the rules are fair, the farmers want their workers organized. I think they realize there is some benefit in having an organized supply of labor and get away from the hit-and-miss kind of thing that we have had to operate on.

So I think we have come a long way in getting farmer support, but I think we would be making a tragic mistake if we tried to apply to that farm problem rules that were not drawn for that purpose and were not adaptable to the unique farm problem.

Mr. STEIGER. You make your point very well, and I concur with you; the change in attitude is a significant shift on the part of many of the farm community with which I think you have to deal. I think you have to recognize that, and I think you have to try to meet, to the extent possible, how we reconcile conflicts that take place.

Thank you very much for coming this morning.

Mr. O'HARA. Mr. Ullman, I am not sure I thoroughly understand what would happen in the case of a strike or in the case of a service of notice of intention to strike. Would you go through that with me?

Mr. ULLMAN. The bill would allow the farmworkers a system whereby they could give a 20-day notice of intent rather than, under the NLRB, a 60-day notice. We modify that to a 20-day notice of intent to strike.

Then we have injected something that is not in the NLRB, a 10-day period temporary restraining order that can be required by the employer in court for delay of the strike. Then, on request by either party, there is a 40-day mediation period in which there are rules for defining the referee and so on.

Mr. O'HARA. Would this apply to a strike situation when there is a collective bargaining agreement and to a strike situation where the union is seeking recognition or what?

Mr. ULLMAN. We have a provision for jurisdictional conflict, for instance, where the NLRB does not have a comparable situation, and we have some special rules applicable there. Frankly, my memory is not such that I can specifically answer your question.

Mr. O'HARA. Assuming we have a notice of intent to strike given—and that is given 20 days before you can go out on strike, right?

Mr. ULLMAN. That is correct.

Mr. O'HARA. And then on the 20th day, the employer could get a 10-day extension—

Mr. ULLMAN. Right.

Mr. O'HARA (continuing). So the union could not strike for another 10 days?

Mr. ULLMAN. That is right.

Mr. O'HARA. And then, at the conclusion of that 10 days, the employer could invoke a 40-day mediation period, is that right?

Mr. ULLMAN. That is right. However, this does not differ from the NLRB procedures. It is quite comparable in the mediation period. I think the 10-day period is unique. On the other hand, under NLRB rules, there has to be a 60-day notice. Here we allow only a 20-day notice of intent to strike.

So, because of the nature of the critical harvest period, this 10-day period, I think, is quite important; but here again, if the committee felt that we were loading this up one way or the other too much, I would be very happy to talk to the committee about some modification. It is our feeling, though, that this is balanced and that it would protect both parties equally.

Mr. O'HARA. Let us assume for the moment that there are some growers in Oregon who employ substantial amount of labor only at the harvest period. Is that right? Wouldn't that be true in some of your field crops—strawberries, for instance?

Mr. ULLMAN. Yes. First I would say that the 10-day period is a court-granted period. In other words, it is not automatic, but the employer has a right to go to the court and get a 10-day temporary restraining order on the basis of critical economic impact.

You have to recognize that even in canning you do not have the critical problem you do in agriculture. You come halfway to it. I mean it is somewhat critical, but, in agriculture, you have, in crop after crop, a time when, at the very moment that that crop peaks, it has to be picked. You have only a limited period. You have a time frame that does not give you any flexibility; and it seems to me, if you do not provide special rules, you are weighting this thing way over to the employees' side, and all we want is a balance.

We want equal protection, but you have the gun at the farmer's head if you have a 15-day harvest period and you allow circumstances where labor can walk out at that time without proper procedures in advance. I think that as you are approaching this 15-day period, you have the farmer in a situation where you cannot bargain any more. He may lose his farm.

I have lots of crop areas where the farmer puts more than \$500 an acre into his crop in the process of growing it, and you wipe him out if you don't allow that crop to be harvested at the critical period.

Mr. O'HARA. Take a 15-day harvest period. Let us take a grower who does not have any substantial number of employees prior to the harvest

period. During the harvest period, he hires a number of employees. The union goes in and organizes those employees, gives their notice of intent to strike. By the time the 20 days are up, the crop is picked, the employees have been laid off and gone on to other jobs, and the whole thing is over with. What happens then?

Mr. ULLMAN. Well, the courts, of course, must have the responsibility of deciding to grant the 10-day temporary restraining order. I would think that they would take this matter into consideration. However, I would say that if the 20-day period were invoked, take your 20-day and your 10-day and your 40-day period, you have 70 days then.

The union would have the option of taking their 20-day notice early, and presumably, then, you could run right up to the end of the 40-day mediation period at the very time the harvest was coming on. So you are not completely freeing the farmer from that emergency situation. I would say that organized labor would know this situation, and would anticipate it in their contracting procedures.

So I think you have the ingredients of trying to arrive at a solution prior to the harvest but that, no matter what time period you set, they could organize their strike to hit the crucial period; so I think that the farmer, even under this bill, has a grave threat hanging over his head.

If the 70-day period were expiring at the very time that his harvest was coming on, he would still have a gun at his head, but we think that this mechanism is far better than any in the NLRB.

Mr. STEIGER. To proceed with this further, though, what happens at the end of the 40 days? As I have read the legislation, you go through this referee that is created, and you have a contract which is recommended, and that becomes binding if it is accepted. If it is not accepted, does the bill provide that at that time a strike may take place?

Mr. ULLMAN. Might I refer to counsel here. May I call Mr. Miller up here to give us some staff assistance. What happens under that circumstance? The situation is that at the end of the 40-day period in which the referee has been chosen and there has been a recommended settlement, supposing then even that is not accepted by either party at the end of the 40-day period. Then what happens?

Mr. MILLER. Then a strike is permissible. This is sort of a last-offer type of thing, but it is not a mandatory agreement. It is a recommended contract settlement which is binding on the party who invoked the mediation period, but the other party does not have to accept it. If they reject it, they are right back where they were.

Mr. STEIGER. Let us go in further. Within Oregon, you have pears and apples, cherries—

Mr. ULLMAN. All kinds of berries, all kinds of vegetables; we have onions and potatoes, and sugar beets, et cetera.

Mr. STEIGER. On the question of, let us say, onions and sugar beets, that is less critical, is that fair to say?

Mr. ULLMAN. You have a longer time period. Maybe you have a 30-day harvest period rather than 15 days.

Mr. STEIGER. What kind of time period are we talking about with pears, apples, berries? Can you give us some idea from your experience?

Mr. ULLMAN. It varies somewhat, but I would say that in almost every instance of fruits, you do not have more than a 15-day leeway in harvesting. If you go beyond the 15 days in virtually all of those

perishable crops, you have lost your crop. It may not be 100 percent lost. It would not be, but you have lost the peak of the crop in almost every instance.

Mr. STEIGER. In those fruits within the Medford area, are there mechanical pickers that are available now in the case of those kinds of crops?

Mr. ULLMAN. No, this is all hand labor. In the case of sweet cherries, you have about a 5-day period. In other words, that is critical. When they come right to the point of harvest, they have to be picked. So it varies from 5-10 days, and there are no mechanical pickers. These are all soft, perishable kind of commodities that require hand care.

Mr. STEIGER. What kind of labor is used basically to pick that kind of crop? Again let us use the fruit—pear and cherry crop.

Mr. ULLMAN. There is first a backlog of local labor, including housewives and young people. The backbone, though, of this harvest force is migrant labor, the migrant work force that is partly white, partly Mexican-American, that moves up and down the coast or comes up from Texas in order to harvest the crop.

Mr. STEIGER. Under the present situation, taking our typical pear farmer, pear rancher, let us say he is hiring out of the migrant stream. That is handled how now? Does he have a migrant camp if his operation is large enough?

Mr. ULLMAN. Yes; the growers sometimes get together and combine these labor camps as a cooperative effort. The larger ones—and there are still family farmers—have their own housing, and they are more than labor camps. They are attempting to upgrade the housing.

There are some Federal housing programs. We have some very excellent examples of housing. We have some that are not that good but, by and large, I think the housing in our area is acceptable.

Mr. STEIGER. How long, under those circumstances, would a migrant laborer work for a particular farmer in picking fruits, for example?

Mr. ULLMAN. In the fruit business, they would have about a 60-day period, 45 to 60 days. Most of the farmers have both apples and pears. They have the early varieties and the late varieties, so the workers move from one section of their orchard to another.

But in any one variety, the period is critical as to when they have to harvest. But they have enough varieties of both pears and apples and possibly cherries on their farm that they can move from one to the other over about a 60-day period.

Mr. O'HARA. I thank you very much, Mr. Ullman, for appearing before us.

The next witness scheduled to appear before the subcommittee is the Honorable Al Quie, a Member of the House from the First District of Minnesota, and the ranking minority member of the Committee on Education and Labor. Mr. Quie, the subcommittee would be very pleased to hear from you.

STATEMENT OF HON. ALBERT H. QUIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. QUIE. Thank you, Mr. O'Hara and Mr. Steiger. I appreciate the opportunity to appear before the subcommittee and testify on farm labor legislation and, in particular, in support of H.R. 13981, the bill

that I have cosponsored with Congressman Leggett, Congressman Ullman, and Congressman Teague.

My testimony will emphasize three major areas. The first is the need for farm legislation; second, a brief review of the major approaches to farm labor legislation; and lastly, a discussion of the more significant provisions of H.R. 13981.

The importance of farm products—their production, transportation, and the need to have them readily available in both domestic and foreign markets—is a matter of little doubt. The export of our agricultural products has grown in recent years and contributes billions yearly to the plus side of our balance of trade. Domestically, the continued availability to the American people of farm products at reasonable prices is not only a desirable but a necessary goal.

In a real sense, the agricultural industry and its employees have been legislative “orphans” because we, in the Congress have not provided any legislation in the labor relations field. In my view, it is time to remove agriculture from that orphan status and to enact a balanced piece of labor legislation that will be both fair and fruitful.

With increasing turmoil in the farm labor field, there is a growing consensus among the agricultural management and employee organizations as well that legislation is needed to regulate the growing number of labor disputes in the industry. It seems unnecessary to repeat what has been adequately brought out by Members who have testified previously about the labor turmoil that has erupted in the past few years, particularly in California and Florida.

One area which spawns unnecessary labor strife is recognition strikes. Whether it be an employer who is refusing to recognize a demand for recognition and bargaining made on behalf of his employees or whether it is a union making a premature claim to represent employees, this is an area that can best be handled by secret ballot elections, without the necessity for strikes, picketing, boycotts, et cetera. We can make recognition strikes unnecessary and unwarranted.

An additional reason for the need for farm labor legislation is the unique nature of the industry. The perishability of agricultural products and the fact that the fruits of months of work may be ruined by labor disputes at crucial harvest times makes it important that legislation be enacted and that it take into account that unique nature.

PENDING LEGISLATION

My review of the bills offered thus far compels me to the conclusion that despite the variety of proposals already offered, there are basically three approaches.

One approach—the Wagner Act—this is best exemplified by title I of H.R. 5010, a bill introduced by Chairman O'Hara. It grants to farm labor and organizations representing them the right to organize and bargain over wages, hours, and working conditions. However, this approach is, in effect, one sided, because, while it grants privilege and benefits, it provides virtually no significant restrictions on union unfair labor practices:

A Wagner type approach does not prohibit secondary boycotts—it would not prohibit organizational picketing even if another union represents the employees; it would not require a union to bargain in good faith; it would not prohibit a union from engaging in jurisdictional strikes; nor would it prohibit a union from

engaging in a myriad of activities against its own members, such as the charging of exorbitant union dues and initiation fees or getting an employee fired because of his failure to do the union's bidding, or coercing an employee into signing union authorization cards. It is my impression that H.R. 5010 would not prohibit the above conduct.

Hopefully, the majority of unions, like the majority of employers, won't engage in unfair labor practices. However, we have had a 12-year history of the Wagner Act, and Congress then decided, after long debate and deliberation, that the act was heavily balanced in favor of labor and that "rules of the game" should be made to apply to both sides in the labor-management arena.

In my view, it has been conclusively shown that a one-sided approach in labor-management affairs does not work. Nor do I find credible any argument that because union organization among farm-workers is in its infancy, that it should be permitted to engage in unfair labor practices and be completely unfettered from rules or regulations of fair play.

To me, it is axiomatic that where two sides exist, as they do in labor-management relations, there must be rules regulating both sides. Certainly, Minnesota football fans wouldn't appreciate a game played against Detroit in which the Detroit Lions were permitted to clip, to hold, to interfere with pass receivers, and to engage in other illegal practices while the Minnesota team was required to abide by the normal rules of the game.

I do not, therefore, regard H.R. 5010 or similar bills as reasonable alternatives in their present form and could not support them.

A SECOND APPROACH—INCLUSION UNDER THE NLRA

A second approach is exemplified by those bills which would include the agricultural workers under the National Labor Relations Act—H.R. 10445, Members Sisk and McFall, and similar bills. In my view, two factors militate against such an approach. In the first instance, the act was not written with the unique nature of the agricultural industry in mind. The perishability of agricultural products and the limited and hence crucial duration of the harvest or processing period make the agricultural employer extremely vulnerable to strikes.

A season's work culminates in a short harvest or processing period. The inability to transport his products to market or to have them processed at the crucial time could force a farmowner into bankruptcy. The farm operator is already subject to such uncontrollable variables as the weather, crop diseases, crop surpluses, competing foreign production, et cetera, and he should not be subject to unlimited vulnerability to strikes at crucial times.

The NLRA was not designed for the agricultural industry, nor does the NLRB have the expertise or the special statutory provisions necessary to give cognizance to the special characteristics of agriculture.

Second, the NLRB, whether deservedly or not, has been subjected to continuing criticism over its interpretation and application of the act as well as for its delay in its handling of cases.

Employers frequently allege that whatever bargaining units the unions seek are found to be appropriate by the NLRB and that such units in many instances are based on the extent of union organization.

There are other allegations that the Board often finds violations of the act even where substantial evidence to support such finding is lacking. Unions on the other hand have been critical of the delay in the Board's processes.

This past year the Special Subcommittee on Labor has held hearings on proposals to expedite the processes of the NLRB. In a background sheet issued to explain the purposes of H.R. 7152, the length of time for NLRB disposition of charges was summed up thusly :

In sum, it can easily take 2½ years from the time a worker walks into a regional Labor Board office with a charge that he has been discharged illegally until the time a court of appeals finally issues an order that he be reinstated to his job with back pay.

With an annual caseload running at approximately 34,000 cases a year, it is unrealistic to expect the NLRB to handle agricultural disputes in a timely, expeditious manner. Consequently, the NLRB would be an unacceptable forum for the regulation of the agricultural industry.

A third approach—bills tailored to the agricultural industry : Bills in this category would be those introduced by Mr. Veysey, H.R. 10459, Mr. Talcott, H.R. 1689, and H.R. 13981, a bill which I intend to discuss later at length. It is from proposals in this category that a balanced farm labor relations law can properly evolve.

There are a number of similarities in these three measures. A principal difference, perhaps, is that Mr. Talcott's bill prohibits strikes and substitutes binding arbitration, while the others place minor restrictions on the right to strike and lockout. As Messrs. Veysey and Talcott have already testified in support of their respective bills, any further discussion on my part would be redundant.

The bill I have cosponsored, H.R. 13981, is a balanced approach. This bill represents a bipartisan, balanced approach to the labor relations problems existing in agriculture today. As you are probably aware, Congressman Leggett is the principal sponsor and Members Ullman, Charles Teague, and myself have joined as cosponsors.

Before elaborating on specific provisions of this bill, it should be noted that it is a composite, compromise bill. It is a composite in the sense that it incorporates many of the provisions of the existing NLRA or some modification thereof with some new language. It represents a compromise because, while it avoids compulsory arbitration or the complete banning of strikes, it does contain special provisions designed to encourage settlement of contract disputes and thereby attempts to hold strikes to a minimum.

The major thrust of the bill is the establishment of a separate Agricultural Labor Board and independent general counsel, with the general requirement that representation elections are a prerequisite to exclusive recognition and bargaining and the special provisions involving notice of intent to strike and a mediation period designed to bring about contract settlements.

As I noted in my remarks made in connection with the introduction of this bill, it has a threefold objective. It establishes the "rules of the game" for agriculture, while giving due weight to the public interest, and, in effect, it recognizes the basic interests of farm management, farm labor, and the public.

MAJOR FEATURES OF THE BILL

The bill establishes an Agricultural Labor Relations Board, ALRB, composed of three members appointed by the President and confirmed by the Senate for a term of 5 years. It also establishes a general counsel, whose term is for 4 years and who is also appointed by the President. Except for the difference in the number of board members, the language is essentially that of the existing NLRA.

The bill adopts the 500 man-days coverage provision contained in the Fair Labor Standards Act by defining "agricultural employer" as one who employs more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year. This would extend jurisdiction to the large farmowner or the agribusiness which employs six to seven or more full-time employees.

The reason for limiting such jurisdiction is relatively simple. The serious labor-management problems occur with the larger farmowner or the agribusiness, and that is where the law should be applicable. There is no intent and obviously no need to assert jurisdiction over the small family farm, which would usually be operated by an owner or his family.

The Board, ALRB, will determine what units are appropriate for bargaining. Inasmuch as such determination would be in a new field, it was deemed more appropriate for the Board to make the initial determinations of appropriate units based on their judgment and expertise rather than to delegate such decisions to subordinates in the field or at the regional offices.

However, the bill also provides that the Board shall publish in the Federal Register rules on standards, criteria, or policy involving representation issues. This will permit interested parties to comment on or request hearings on proposed standards.

If a conflict arises over whether the ALRB or NLRB has jurisdiction over a particular dispute, the Secretary of Labor is authorized to resolve the dispute. While the possibility of much conflict in this area seems remote, it was nevertheless deemed desirable to provide for such a contingency in the event an irreconcilable conflict arose between the two agencies concerned.

The bill authorizes a union representing employees to make an agreement with the employer requiring that employees join the union on or after the seventh day of employment. It is comparable to the 7-day union shop clause granted construction workers under the NLRA. Because of the transitory nature of some agricultural employment, particularly at harvest time, a 7-day union shop clause is considered appropriate.

In addition to the adoption of the unfair labor practices set forth in the NLRA, this bill adds two new unfair labor practice provisions: one, makes it an unfair labor practice for both unions and employers to strike or lock out, respectively, without complying with the notice provisions of section 13(b); the second, section 8(a)(7) makes it an unfair labor practice for an employer to "knowingly employ" any alien who is in the United States in violation of law. This is intended to protect jobs and job openings for unemployed Americans.

Section 9 of the bill provides that secret ballot elections will determine the validity of representation claims. This section of the bill is

similar in content to section 9 of the NLRA with one important difference. An employer is not required to bargain with representatives of his employees unless there has been an election and certification of a bargaining representative. There is one exception, however, and that occurs when an employer engages in such flagrant unfair labor practices that no fair election can be held. Those particular provisions are spelled out in subsection 9(a) of the bill, and they incorporate the holding of the Supreme Court in the *Gissel* decision.

The effect of this section is to require elections to determine representation claims with the exception previously noted. An election was deemed a necessary prerequisite because of many abuses which have arisen through the use of union authorization cards under the NLRA.

In some instances, misrepresentations were made to card signers that they were only to secure an election, that everyone else had signed a card, or direct or indirect threats of coercion if cards were not signed.

The emphasis on the need for an election as a prerequisite to bargaining is the gist of this section.

INJUNCTIVE PROCEDURE

This bill contains a provision, section 10(1)(2), which permits a charging party to petition a district court in the name of the Board, for a temporary restraining order not to exceed 10 days when a violation of sections 8(a)(6), 8(a)(7), 8(b)(4), 8(b)(8), or 8(e) is alleged and the petition alleges "irreparable injury" to the charging party.

The district court is given jurisdiction to grant such temporary restraining order, not to exceed 10 days, as it deems just and proper without notice and notwithstanding any other provision of law. No extension of such injunction can be made except pursuant to a request for extension by the Board itself.

The above provision permits limited injunctive relief but subject to two very substantial limitations: one, a violation of the specific sections cited and, secondly, sufficient proof to a Federal district court judge that the charging party will suffer "irreparable injury." Mere allegation of "irreparable injury" will not suffice, nor will the mere fact that a strike is imminent be a sole basis for an injunction.

Since factual situations will vary, a Federal district court judge is in the best position to judge, on an "ad hoc" basis, when an injunction should be issued that fulfills the requirements of "irreparable injury."

This provision was deemed necessary because of the perishable nature of agricultural products and is an attempt to moderate the effects of any strike which can cause substantial and irreparable injury to an employer. Inclusion of such a provision in the bill makes it unnecessary otherwise to prohibit strikes or to provide for compulsory arbitration, two alternatives that I consider much less desirable.

May I add here that, after listening to Congressman Ullman, I think I should make it clear that the 20-day notice would have to be complied with first and then the 40-day mediation period before the 10-day injunctive relief could be attempted. You could not go from a 20-day notice to the 10-day injunctive relief.

Section 13(b) is one of the most important provisions of the bill because it offers a different approach to settlement of contractual disputes, tailored to meet the unique nature of the agricultural industry. Section 13(b) has five major points as follows:

(1) It provides that an employer shall not lock out nor shall a union strike, picket, or engage in similar activity without giving the opposing party 20 days' written notice of its intent to do so.

(2) It provides that any party receiving a notice of intent may invoke a 40-day mediation period by giving written notice thereof to the opposing party, the Federal Mediation Service, and the ALRB. Such 40-day period commences at the end of the 20-day notice or immediately upon receipt by the opposing party, whichever is later. Only one 40-day mediation period may be invoked and strikes and lockouts are prohibited during such period.

(3) Upon receipt of a notice invoking mediation, the Federal Mediation Service shall assign a mediator to assist in the resolution of the dispute. If after 20 days of such 40-day period the dispute has not been resolved, the Mediation Service shall furnish a list of five names from which the parties shall choose a special referee.

The special referee shall hear the dispute and, not later than 5 days before the end of the 40-day mediation period, shall recommend a collective bargaining contract to the parties. If the dispute has not been settled, the recommended contract shall be binding upon the invoking party if accepted by the other party before the end of the 40-day mediation period.

(4) Further provides that there shall be no lockout, strike, or similar activity during the 20-day notice of intent or the 40-day mediation period. A notice of intent filed subsequent to the filing of a "notice of intent" by another party will not act to extend the period in which no action can be taken. In effect, only one notice of intent can be used.

(5) A recommended contract which has become binding on the parties is declared a contract as that term is used in section 301 of the National Labor Relations Act.

Section 14(c) (3) is another provision worthy of special comment. It provides that the Agricultural Board is authorized and directed to administer and apply the provisions of this act with due regard to the special characteristics of agriculture and employment in agriculture.

This provision was inserted for the purpose of emphasizing that the Agricultural Labor Relations Board is not bound by existing case precedent established by the National Labor Relations Board, whether it be with respect to appropriate bargaining units or the disposition of unfair labor practices.

The sections I have cited are those generally which differ substantially from the existing language in the NLRA. Obviously, there seems to be little point in discussing those sections which were taken verbatim from the existing NLRA or are minor modifications thereof.

In closing, I can only reiterate that the time is now appropriate for the passage of balanced farm legislation; that the enactment of a "Wagner Act" or a simple amendment to put agricultural employees under the existing National Labor Relations Act is, in my mind, a stereotyped approach which does not give full consideration and weight to the unique nature of agriculture; finally, while H.R. 13981 is not a perfect bill, it incorporates provisions which attempt to meet the special needs of agriculture while still providing substantial rights to farm employees to organize, bargain, and to strike for better wages, hours, and working conditions.

Mr. O'HARA. Thank you, Mr. Quie. Before we go to Mr. Steiger and before I get around to asking some questions about your bill, I would like first to direct your attention to the portions of your statement—I think on page 3 of your statement—that refers to title I of H.R. 5010, a bill I have introduced, and I would like, if I could, to correct some misapprehension which you seem to be under with respect to the provisions of my bill.

While the provisions of my bill make certain parts of section 8(b) of NLRA inapplicable to agriculture, they do not make all of section 8(b) inapplicable to agriculture. For instance, you suggested that my bill does not require a union to bargain in good faith. Well, bargaining in good faith is required by 8(b) (3), and 8(b) (3) would still apply to an agricultural union under my bill.

Second, you suggest, in lines 7 and 8 on page 3, that my bill does not prohibit a union from engaging in jurisdictional strikes. Jurisdictional strikes are covered under the National Labor Relations Act under section 8(b) (4) (d), and my bill does not relieve the union from the obligations of section 8(b) (4) (d), so, to that extent, that is incorrect.

Mr. QUIE. Thank you for those corrections.

Mr. O'HARA. I have a couple of more. I would just like to set the record straight, because the first thing I know, I am going to find the Farm Bureau repeating those charges.

The next item, on lines 8 to 10, you suggest my bill does not prohibit a union from engaging in charging of exorbitant union dues and initiation dues. The dues and initiation fees language is section 8(b) 5 of the National Labor Relations Act, and it would still apply to agricultural workers if my bill were to be enacted.

Then you suggest that my bill does not prohibit a union from getting an employee fired because of his failure to do the union's bidding. I think you are referring to section 8(b) (2), which is "cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (2), and (a) (3) says "discrimination in regard to hire or tenure or any condition of employment." Those would still apply under my bill.

Finally, you suggest that the union would be able to coerce an employee to sign union organization cards where that is forbidden under section 8(b) (1) of the National Labor Relations Act, and 8(b) (1) would still apply to agricultural unions under my bill.

However, I do want to confirm the correctness of a couple of your observations in respect to my bill. As you say, my bill would make the so-called secondary boycott provisions inapplicable. Yes, it would. That is certainly my intention, and I think it is carried out by the language of my bill.

Likewise, hot cargo provisions in collective bargaining provisions would be permitted under my bill, and all of 8(b) (7) would be made inapplicable.

Mr. Steiger, do you have any questions?

Mr. STEIGER. Is it possible to have a strike under your bill in a representation election?

Mr. QUIE. No. You mean in the case where they picket to convince the members—I don't believe there would be, because they would have the election. I don't see there would be the possibility.

Mr. STEIGER. You don't foresee informational picketing, was it called?

Mr. O'HARA. Organizational picketing.

Mr. QUIE. It is not prohibited, but I don't foresee its happening.

Mr. STEIGER. Go through with me, if you will, how we operate if one were to assume the Leggett-Quie bill were to pass and you have the situation, let us say in Wisconsin perhaps, comparable in Minnesota, with, let us say pickle harvesting, and pickle harvesting in Waushara County, Wis., goes on essentially for about 2 months.

Now, how, as you envision this, would your bill operate in terms of determining jurisdiction, in terms of allowing a representative election to take place, in allowing bargaining to take place? How do we get that done in that short a period of time?

Mr. QUIE. Let us assume that, in the pickle harvesting—a farmer had more than six or seven employees during the year, but he has substantial influx of workers during the harvest time, during the 2-month period. Let us say he is up to 50 employees at that time.

The ALRB then would decide on what unit would be the effective unit. They could decide that the permanent employees and the temporary employees all be part of the same unit and bargain together, or they could decide that you would permit them to have two units, one with the permanent employees, and they could then hold election beforehand and the temporary ones would be a separate unit unto themselves. So you could do it either way.

I don't know how they would reach that decision. That decision would have to be made by them, and it would depend on the request of the employees and how they would want to do it.

Let us assume that the only time they could ever get the employees together to effectively carry an election was during the harvest time. Then, in that case, they would hold their election and be unionized, and that would carry over until the next year. For that harvest period, they would not strike, because they could not give that notice and the employer would require a 40-day mediation.

But the next year comes around, and let us suppose that the permanent employees did not want to be unionized. They could not hold an election before the year was up, so they would be back into the next harvest time again; but the union, since they are organized then before the next harvest period, would undoubtedly pick their 20 days substantially before the harvest, when they give their notice of strike if they are going to strike.

The employer, I expect, would then wait until closer to the harvest time before he would invoke the 40-day mediation period, and I guess you know how the situation runs from then.

Let us suppose they run through the 40-day period. If they have not settled at the end of 20 days, then, assume the employer asks for a referee, and the referee comes up with a contract. If the union will accept it, the employer is bound by the contract. There is no strike and they are working.

If the union does not accept it, of course, then you run through the 40-day period, and then they have the right to strike.

The employer could try to claim irreparable damage, but he would have to prove that to the district court judge in order to get his 10-day injunction. At the end of the 10-day injunction, he would then have

to prove it to the ALRB, and then go back and try to prove it to the judge that he needs a further extension of injunction, similar to what is available now for employers under the NLRB.

Mr. STEIGER. How does the employer determine in that second year or the end of the first year who his employees are if they are seasonal? Are we to presume that the employee is a part of the bargaining unit from then on, he comes back each year?

Mr. QUIE. You mean the temporary employees?

Mr. STEIGER. Yes.

Mr. QUIE. The temporary employees who come back are members of the union. The ones who are new would have 7 days—undoubtedly the union would do the same thing as in the building and construction industry and have the 7-day period there. At the end of 7 days, they would have to be members of the union.

Mr. STEIGER. So you foresee, in effect, a floating group of temporary employees who are permanently a part of a union?

Mr. QUIE. Of a national union.

Mr. STEIGER. And would be recognized to bargain for this purpose?

Mr. QUIE. That is right.

Mr. STEIGER. Let me go back again now in terms of this first-year operation. Am I to take what you have said as an effort, in effect, to say that it is your best judgment that the problem of the no-strike arises in your mind eventually only in the original period of time in which bargaining takes place and a strike is prevented as a result of the 20 days and then the 40 days; that you do foresee in the second and third and fourth years the ability of the farmworker, in fact to come close to being able to strike if he moves early enough in giving notice that that is his intent?

Mr. QUIE. He undoubtedly would move early enough. But I do not think there is any question of whether they would do that. Yes, I would say there is still the opportunity for the farmworker to strike.

Mr. STEIGER. Your statement is a good statement. I will pass for the moment.

Mr. O'HARA. Mr. Quie, let us go on with the same subject for a while inasmuch as Mr. Steiger has opened it. Let us take an apple grower somewhere. He perhaps has one or two people working for him most of the year or much of the year and he perhaps has 30 or 40 working for him at harvest season, or 50. And the harvest may last a couple or 3 weeks, perhaps as long as a month.

Now let us suppose that—and this will be hypothetical—let us suppose this apple orchard is owned by J. P. Stevens Co. or Millikan-Deering or one of those fellows that has gotten a lot of advice from some labor lawyers and knows how to deal with these workers that are trying to organize.

They are determined they are not going to recognize that union, they are not going to bargain with that union; they are going to force collective bargaining in their apple orchard.

Along comes the union. First they have to say, "We represent a majority of your employees," right?

Mr. QUIE. That is right.

Mr. O'HARA. In which case Millikan Deering or J. P. Stevens says, "We do not think you do, and therefore we refuse to bargain with you." The union then, according to the scenario you gave me, calls for an

election; and an election is set up some time during this period. Presumably they call for the election not when the two full-time employees were there but when the 30 or 50 seasonal employees were there and ALRB conducts an election. Perhaps they find that a majority of the people in that apple orchard want to be members of the union and want to have the union represent them for purposes of collective bargaining, so they certify the union. By that time, the harvest is over and all these people are gone.

Then next year, the employer starts hiring for the harvest. He may or may not hire the same people. He cannot discriminate against people because of union membership, although maybe he does—in the way the testimony before Frank Thompson's subcommittee suggests is sometimes done in the textile industry—he does not hire them back.

So at that point, the union has an unfair labor practices complaint, which they may or may not succeed in establishing. But, in any event, he hires some people back. He puts on his seasonal harvest crew again, and let me ask you: Could the employer request decertification? Could he request another election, or could one of his employees or 30 percent of his employees request another election or decertification procedure?

Mr. QUIE. After a year.

Mr. O'HARA. After 12 months?

Mr. QUIE. Yes.

Mr. O'HARA. Twelve months from what—the last election?

Mr. QUIE. The last election.

Mr. O'HARA. Presumably this would be only 11 months and 2 weeks from the last election, so they could not get it until most of the way through the harvest, is that right?

Mr. MILLER. With exception of if the contract had been signed for 2 years.

Mr. O'HARA. Let us assume there was no contract.

Mr. STEIGER. Is it 12 months from the certification of the election or the date on which the election was held?

Mr. MILLER. From the date of the election.

Mr. O'HARA. So no decertification procedure would be possible until approximately part way through the harvest. In the meantime the union has attempted to bargain with this fellow, and he says, "I am not going to bargain with you," and he won't sit down with them, or else they sit down and they bargain and they do not arrive at any agreement.

So the union gives a notice of intent to strike well before the harvest. The employer does not worry about it until the day before he puts his harvest crew on, at which point he invokes a mediation period, right?

Mr. QUIE. Yes.

Mr. O'HARA. I think you say if halfway through that mediation period—20 days through—they still have not reached an agreement, the mediator does not manage to arrive at an agreement with either of the parties, the mediation service will make up a list of five referees; right?

Mr. QUIE. Yes.

Mr. O'HARA. And the parties may agree to one of those five, who will then make recommendations for settlement of the dispute. And the recommendations will be binding on the employer who invoked the 40-day mediation period if the union agreed to them, right?

Mr. QUIE. Right.

Mr. O'HARA. What if they do not agree on a referee?

Mr. MILLER. The provision of law says they shall select one. It is possible the Board may have to draw up regulations to the effect that, where they do not agree, then a Federal district judge will be appointed or some other alternative.

But that is a point that was brought up previously. It is a possible change we could make in the bill, saying: With the failure of the parties to select one, the Federal district judge in that area will be appointed as special referee, or some other alternative.

But I think it should be made plain that that cannot thwart the process, just by failing to agree on a referee. If they do not, one is selected for them, either by the Federal Mediation Service or by a Federal district court judge.

Mr. O'HARA. That is not clear in the bill.

Mr. QUIE. That is not clear.

Mr. MILLER. No other alternative is stated in the bill. We could put that in legislative history or modify the bill to include an alternative or require the Board to issue regulations filling that gap, either way.

I think probably the preferred way would be to state in the bill, similar to the dock strike legislation, that if they cannot agree, then one will be selected, either Federal district judge or the Federal district judge shall select.

Mr. O'HARA. Let us assume we are over that hurdle and a referee somehow or other is decided upon. At this stage of the game, the harvest is again mostly over with, but the union is still there. So let us assume that the referee has been chosen and he makes recommendations and the union agrees to them and the management is bound to agree to them. Would they apply retroactively or just prospectively?

Mr. QUIE. I would say it would operate as it does now, where the arbitrator can make that determination that it be retroactive. Isn't that the way it works in labor disputes now where there is a voluntary arbitration?

Mr. O'HARA. Yes; I would assume so.

Mr. QUIE. That is what I would expect would be the case, because it would not be fair if it would apply only prospectively. Otherwise, a man would be through his harvest. It should apply retroactively.

Mr. O'HARA. Let us suppose at the beginning of this harvest period the employer did two things. He invoked the mediation period and then he hired a harvest crew, the majority of whom had not been employed by him during the previous year. The union has filed a charge of discrimination under 8(a)(3), unfair labor practices, because they claim the employer has been discriminating.

In the meantime, when the 12-month period has passed, the employer or some person in his employ has managed to sign up 30 percent of the workers asking on a petition for a decertification election. So while we have this mediation process going on, we also have the union's unfair labor practice charge and the employer's request for a decertification election. What then happens?

Mr. QUIE. You have a complicated situation.

Mr. MILLER. Under normal procedures that the Board operates under, that unfair labor practice charge would block the election until that were resolved; so, in this particular instance, no election could be held unless there was a waiver filed by the union saying, "Go ahead and have the election. We are willing to waive our charge."

Mr. O'HARA. Presumably they would not. Having won the last election, they would want to sit tight with that one.

Mr. QUIE. Having brought the unfair labor practice charge. But during that period of time —

Mr. O'HARA. Let us carry that further, then. What, then, if the Board decides that the union's unfair labor practice complaint is justified or even if they decide it is not justified? Then do we have a decertification election in accordance with the petition that had been filed therefor? By this time, mind you, the seasonal crew is gone again.

Mr. QUIE. It is my understanding the way we wrote this that if the unfair labor practices is justified, then they could not have called the decertification election.

Mr. MILLER. It depends on the relationship now. If the employer is found guilty of soliciting and getting these people to sign a petition for decertification election, then they would not hold one. But if it is simply a discharge of one union member which did not have a relationship to the election, it might be held once the unfair labor practices charge is disposed of. It does not have any real relation to the representation issue. But if it does, then no election would be held.

Mr. QUIE. That makes it acceptable, I would think. If the unfair labor practice had nothing to do with representation, then it would not apply. But if it did have anything to do with representation, then it would be prevented for opening up for another election.

Mr. O'HARA. In our specific case, the unfair labor practice charge is that the employer, in hiring in that second harvest, had discriminated against persons who were union members or who were thought to harbor union sympathies.

Mr. QUIE. It would then have direct bearing on the election.

Mr. STEIGER. Is there a time constraint within which the Agricultural Labor Relations Board has to act in any of these situations?

Mr. QUIE. No. There is not in the bill.

Mr. MILLER. But the emphasis has been on timely and expeditious action. It would be hopeful in promulgating regulations that there caseload would not be that much that they could act —

Mr. QUIE. The industry is not that bad, as we find with the NLRB.

Mr. O'HARA. With respect to this referee, we do not give him any criteria by which to make his judgment except to the extent that they might be given the regulations of the Federal Mediation Service. What should he look to in determining what those apple harvesters should receive? Do you have any notions of that or are there criteria in the Federal mediation regulations or do you have criteria you would like to suggest?

Mr. QUIE. What I would expect to happen is what came up in the dock strikes, that certain individuals develop that expertise. Originally they had been developing people with that competency from the Mediation Service but soon they would have men who have had experience before that they would draw on in making that settlement.

I don't know how we could write that criteria into law, because

this is a new industry to us and it varies so much from agricultural enterprise to agricultural enterprise.

Mr. MILLER. Presumably the Mediation Service would select five individuals with some expertise in the agricultural field so that both parties would be satisfied that it would not be a total stranger to the industry problems.

Mr. O'HARA. One would certainly hope so, but I think that perhaps we ought to try to give some guidance to these people, if we were to enact this legislation, so that they would have some criteria under which to operate.

We have never gone into this before. Even the President's emergency disputes bill does not get into a field like this, because his emergency disputes bill deals with industries that are heavily organized and where you have the benefit of much background in terms of previous collective bargaining agreements, collective bargaining agreements in other parts of the transportation industry, a lot of that sort of material, whereas, in agriculture, you don't have that.

Then, in addition, under the emergency disputes bill, they are taking a choice between two final offers, sort of going off on their own.

So I think there are some serious complications in terms of what kinds of judgments we expect this referee to make. I think we have given him a very tough assignment, or you have in your bill.

Mr. QUIE. True. However, the referee only recommends a contract settlement which differs from the normal compulsory arbitration procedure whereby both parties agree in advance to be bound. Here the party not invoking the mediation process is still free to accept or reject the recommended contract.

Mr. O'HARA. There are several other matters here I want to take up with this Agricultural Labor Relations Board. My recollection is that the gentleman from Minnesota was a supporter of the idea of a labor court system under the National Labor Relations Act. Am I incorrect in that?

Mr. QUIE. You are incorrect. I have talked about it with people but have never come to supporting it and have never introduced a bill. I never found one that would work yet.

Mr. O'HARA. In this proposal, with exception of the numbers, you follow the model of the National Labor Relations Board with the General Counsel, and the board members, appointed by the President and confirmed by the Senate?

Mr. QUIE. Right.

Mr. O'HARA. I note that in your bill, you make the employment of an illegal alien an unfair labor practice—knowing and willful employment of an alien illegally in the country. It is an unfair labor practice under 8(a)(7). I am pleased to see your endorsement of this concept.

Mr. QUIE. I would say to the gentleman that I got it from you, in the Fair Labor Standards Act.

Mr. O'HARA. I wanted to give you credit for that.

Mr. QUIE. I give you credit for influencing me. I think it is especially important in this field of endeavor.

Mr. O'HARA. Where the employment of illegal aliens is alleged to be fairly frequent and the "knowing and willful" is alleged to be

a fairly frequently used strike breaking tactic, yes, I would think it would be appropriate. I hope Mr. Steiger would agree with that.

Mr. STEIGER. I am just an innocent bystander.

Mr. O'HARA. In any event, I think we can agree that where an employer knowingly and willfully employs an illegal alien, it would not be inappropriate to impose some sanction. Mr. Quie, I thank you very much. I know we will have many other opportunities to discuss this bill.

Mr. QUIE. I would say, Mr. Chairman, that I appreciate your taking this up, because I believe the situation today is certainly different than it ever was before. The need is much greater now around the country, and I think we will find a sympathetic desire to come to a meeting of the minds on this from people who previously were just flatly opposed.

Mr. STEIGER. Are there farm organizations and others in the field that have decided to support one or the other of the bills now pending?

Mr. QUIE. There are farm organizations that are pretty interested in this now that once were opposed to anything coming under any labor relations board, but they will have to speak for themselves as to which bill they support. I suspect they support this one rather than the other two approaches.

Mr. O'HARA. I think your suspicion may be well-founded.

Thank you very much.

Our next witness will be Hon. Robert L. Leggett, a Member of the House from the Fourth District of California.

Mr. Leggett we are pleased to have you.

STATEMENT OF HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LEGGETT. Thank you, Mr. Chairman.

Mr. Speaker, a little over a month ago, I introduced the Agricultural Labor Relations Act of 1972, this bill, H.R. 13981, was co-sponsored by Congressmen Quie, Ullman, and Teague of California.

During the intervening month, the bill has caused considerable controversy and has been the subject of a good deal of misinformation and misunderstanding. It is because of this that I feel I should discuss and explain the bill: Why I sponsored it, what it is, what it is not, and how it compares with other proposed farm labor legislation.

Unions have won unprecedented gains for their members. Even an unskilled worker such as a supermarket checker makes over \$11,000 per year in metropolitan areas.

But it is common knowledge that agricultural workers have been left behind. Their working and living conditions are adequate in some areas—I'm proud to say my district is one of these—but more often than not they are atrocious. Wages are poor.

The cause and effect are clear. Farm laborers are not covered by the National Labor Relations Act. Labor law in the agricultural field has been largely the law of the jungle.

The purpose of the bill I am proposing is to bring farm labor firmly into the collective bargaining process, to require growers to bargain with legitimately organized and legitimately elected unions, and to regulate the election and bargaining processes in a way that is fair to all concerned.

I have long felt that the best solution was simply to bring farm labor under the NLRB just like any other kind of labor. There have been a number of attempts to pass legislation to this effect, all of which I have supported. However, none of them have been successful, and there is little prospect that this will change in the foreseeable future.

So I have developed, together with my colleagues, a somewhat different approach which I hope will draw wider support. I believe it constitutes a reasonable compromise between the interests of management and labor.

As it now stands, the bill provides for the establishment of an independent Agricultural Labor Relations Board of three members. The members are appointed by the President, subject to confirmation by the Senate for terms of 5 years.

There are two reasons for doing it this way. First, the NLRB already has a 6-month backlog; it seems desirable to avoid further overloading. Second, as I pointed out a minute ago, Congress does not appear ready to pass the NLRB plan.

Now I will summarize other key provisions of the bill:

All farmers employing more than 500 man-days per quarter would be covered by the act.

Unlike existing labor law, the act provides that a union intending to strike must give the employer written notice of its intent 20 days in advance. The employer can then invoke a 40-day mediation period, during which the Federal Mediation Service shall attempt to resolve the dispute.

If 20 of the 40 days pass without a settlement being agreed upon, the Federal Mediation Service shall submit a list of five names from which the employer and the union shall select one to serve as a special referee. The referee shall recommend a settlement not less than 5 days before the 40-day period expires.

If the union accepts the referee's recommendations, they are binding on the employer. If the union does not accept, a strike will follow.

A similar procedure applies in case of a lockout. The employer must give 20 days written notice of intent, the union can request the 40-day mediation period, and if the employer accepts the referee's recommendations, they become binding on the union.

The board will supervise employee elections to determine representation, and may set the time of the elections so that they do not occur during an off-season when most of the workers affected are not present. Elections will be held not more often than every 12 months.

The bill authorizes the negotiation of a 7-day union shop and may also provide that the employer must notify the union of job opportunities, but it provides for a nonexclusive hiring hall.

Secondary boycotts are outlawed, as under the NLRB, but informational picketing is permitted. Organizational picketing is prohibited only where a labor organization is currently recognized or an election has been held within the preceding 9 months.

Our bill enumerates a number of labor practices it defines as unfair.

Lockouts, strikes, or picketing in violation of the procedures I described a moment ago are unfair.

It is unfair for an employer to knowingly hire any alien who is in the United States in violation of the law. There is no comparable provisions in the existing Labor-Management Act under which the NLRB

operates. There is a particular need for this provision in the farm labor field. Growers don't bring in foreign nationals out of a desire to assist the underdeveloped countries; they do it because the foreign national will work for lower wages. This is indeed unfair, and in my view it should be labeled as such and subject to the appropriate penalties.

It is unfair for an employer to prevent the election of a union by using aggravated employer unfair labor practices which result in the dissipation of a majority the union would otherwise have had. In this case, the Board can require the employer to bargain with the union even though the latter has not won an election.

In most cases of unfair practice, the bill permits the injured party to seek a restraining order from a Federal district court. These orders cannot be in effect for more than 10 days, and are not extendable unless the Board itself petitions for the extension. Upon application from the Board, the court may issue any injunctive relief it considers just and proper.

As I have said before, I don't regard H.R. 13981 as the ultimate answer. Possibly it isn't even the best answer for 1972. I intend to be receptive to constructive amendments, and I look forward to a thoughtful dialogue with both workers and growers. I believe we can, must, and will improve on the present situation, which is damaging both the abused workers and the strike—and boycott-bound growers.

Mr. Quie, myself, Mr. Ullman, and Mr. Teague did earn a front page picture on the farm bureau publication because we introduced this bill. But I don't really find great unanimous support for this legislation in farm communities because I find that there are a great number in American agriculture that still believe in the law of the jungle in this area and they are prepared to take their risks in the secondary boycott area.

I think if we hope to increase measurable agricultural wages through the exclusive method of the secondary boycott which has currently been used with measurable effectiveness in certain areas, I think it is going to take 100 years to produce some kind of parity between farmworker wages and urban wages.

In California, while we enjoy an average wage on the farm of \$2.45 an hour—we have families that work out there picking, three or four of them in the summer months, that are making \$100 a day, wages which I am not embarrassed about at all.

I think we need better bargaining procedure.

I am currently not under the gun in my area though I have 20 percent of the Nation's wild rice and 20 percent of the Nation's tomatoes and large percentages of almost all nontropical fruit you eat with your hand, in the Central Valley of California.

The boycott procedure just has not reached us yet.

I do not mean to call attention to our area by making remarks about it.

I would say that I think I have fairly good credentials in coming before the committee in that I have coauthored NLRB simple extension to agriculture for at least 6 or 7 years.

I have had a bill to extend unemployment to agriculture on file since I have been in Congress.

The particular member of the local farm bureau who asked me to introduce this bill is the one who has pioneered extension of un-

employment insurance to agriculture in Yolo County, Calif., for the last 8 or 9 years, a member of United World Federalists and a liberal and runs a pretty good outfit.

I looked at this bill long and hard before I decided to introduce it. It is appreciably different from the Murphy bill.

I have a comparison at the end of my statement comparing it to the Murphy bill which shows it is totally different.

And as I envision this, it does require bargaining, it does require a procedure whereby you can call elections at an appropriate time and not when just farmers closely guarded hired hands happen to be on the farm.

It might give the farmers what we call one bite free in that it might take a year of organizing and then the strikes procedures and mechanism would work the second year.

I am opposed to compulsory arbitration in almost every instance where it has been proposed in Congress and when we have had a chance to vote on it. However, I think in the agriculture arena as long as the farmers, some of them, have indicated a desire to come under the collective bargaining procedure with some conditions, we ought to look at that long and hard.

As I understand the procedures, Mr. Quie has outlined, procedure is explained whereby notice of intent can be given very early in the year of a certified union.

When nothing is imperiled and all of the bargaining can take place in January and February after the union has been certified, thereafter in the event they fail to accept the arbitration award, a strike can take place in its normal course.

It is my feeling in California where people working with no skills in construction are making on the average of \$30 or \$40 a day currently, that people who work similarly in agriculture should get the same kind of dough.

They are both seasonal and in both instances and it is inequitable that one with big bargaining power gets big wages and the other with little bargaining power gets little wages.

In Communist countries I understand this is true, so we do have kind of a universal noncomparability in this general subject area.

I think that we have to bring agricultural labor closer into the 20th century. We have to provide for a system where many of the underdeveloped States of the country can compete competitively or vice versa, where California can compete competitively with its high wage rates even in agriculture with some of the underdeveloped States of the Union that have low wage rates.

I think this is a procedure that is a medium ground. I don't think there are too many hookers in the bill though I don't say that the bill is perfect. It does provide a procedure whereby maybe we can get a majority to support a procedure to do something about changing the law of the jungle in American agricultural labor relations.

I yield back the balance of my time.

Mr. O'HARA. Thank you, Mr. Leggett. We appreciate hearing from you. We are going to withhold the questions for now.

Mr. Ryan is here and wishes to testify and we would like to hear from you.

Mr. LEGGETT. I still will support a simple extension of the NLRB to agriculture. I don't think you have the votes for it.

Mr. O'HARA. I think your position is one that is certainly a reasonable one and a flexible one and I congratulate you on the concern you have shown in this subject over the last several years.

Mr. LEGGETT. I would say this: Don't presume that the farmers have not given anything in this particular bill merely because it has a Farm Bureau stamp on it. They have and I assure you that every member of the Farm Bureau is not strongly behind this bill.

Mr. O'HARA. I grant you from any point of view it is an improvement over the Murphy bill and I think it is useful that you include that chart.

(The chart referred to follows:)

MAJOR DIFFERENCES BETWEEN S. 2203 AND H.R. 13981

S. 2203 BY SENATOR MURPHY IN 91ST CONGRESS	H.R. 13981 BY REPRESENTATIVE LEGGETT IN 92D CONGRESS
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Farm Labor Management Relations Board would begin the U.S. Department of Agriculture, and the Chairman of the Board would be an Assistant Secretary of Agriculture.

Prohibits any "strike, picketing, or refusal to perform work in whole or in part, at a farm if such action will result in a cessation of operations necessary to prevent the loss, spoilage, desolation or reduction in grade, quality, or marketability of any agricultural commodity in commercial quantities."

Makes it unlawful for any person "to induce or encourage the ultimate consumer of any agricultural commodity, unless such inducement or encouragement is limited to honest, truthful, and undeceptive publicity and specifically identifies the producer of such commodity, or to restrain, coerce, or threaten where such ultimate consumer, whose object thereof is to force, require or persuade such ultimate consumer not to purchase, consume, or use such agricultural commodity."

Provides for private suit for damages where a designated list of unlawful acts is performed.

Limits voting to an employee "employed by a particular agricultural employer and who has been so employed for at least fourteen workdays during the preceding calendar days and has been employed by that employer or another agricultural employer for at least one hundred workdays during the preceding calendar year."

No such provision in Murphy Bill.

Although Murphy Bill is based on the National Labor Relations Act—There are innumerable departures therefrom which make it difficult to assess the bill as a whole.

Mr. O'HARA. Our next witness is the Honorable William F. Ryan, of New York.

Agricultural Labor Relations Board is an independent agency, in exactly the same manner as NLRB.

No prohibition against a strike. An arbitration procedure is provided. During the pendency of arbitration a strike or lockout would be deferred for 40 days.

Leggett bill does not endeavor to regulate consumer boycotts in any way.

No such private suit for damages except in case of unlawful secondary boycotts. (as also provided in NLRB)

No such limitation on employees for purposes of the bill.

Leggett bill provides it is an unfair labor practice for employers to knowingly employ illegal aliens.

Leggett bill is essentially the same as the National Labor Relations Act—except in the respects indicated above. Page after page of the text is identical language.

**STATEMENT OF HON. WILLIAM F. RYAN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW YORK**

Mr. RYAN. Thank you, Mr. Chairman.

I ask unanimous consent to revise my remarks and have them appear.

Mr. O'HARA. Without objection unanimous consent will be granted for you to revise and extend the remarks you make before the committee and without objection your statement will be entered in full in the record at this point.

(The statement referred to follows:)

**STATEMENT OF HON. WILLIAM F. RYAN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF NEW YORK**

I am pleased to testify before the Subcommittee on Farm Labor of the Committee on Education and Labor on behalf of my bill, H.R. 4438, which would bring agricultural workers within the Labor Management Relations Act by amending section 2(3) of the statute. The bill also adds a new subsection "g" to section 8 of the LMRA to provide, first, that under section 8 it would not be an unfair labor practice for an employer to make an agreement, covering agricultural workers, with a labor organization representing these workers, to require membership in the labor organization within seven days after the agreement is reached. Secondly, the bill provides for priority in employment opportunities based on length of employment with an employer.

This legislation would establish a clearly defined statutory relationship among farmers, farm workers, and the National Labor Relations Act. The recent National Labor Relations Board court action against the United Farm Workers demonstrates the need to define that relationship.

Farm laborers are subjected to blatant economic and social injustice. They are excluded from the protections and benefits entitled to statutory employees under the National Labor Relations Act, and, in many instances, they are paid less than the \$1.30 minimum wage. Women and children are oftentimes forced to work in order to provide a minimal income for their families. Farm workers must also confront other hardships unique to their occupation—short growing periods, poor field sanitation, farm labor contractors, poor living conditions, and hazardous pesticides, plus the other misfortunes of a transient agricultural existence.

The need for protecting farm labor cannot be underestimated. Those in this country who would sacrifice justice and the humble aspirations of the poorest of workers for financial gain have, time and time again, sought to exploit the farm workers to the unconscionable extent of near slavery.

California's native Indians were the first farm laborers in that state. And their predicament was unfortunate. Within 10 years after the initial harvest, due to disease and ill treatment, the Indians had dwindled from 300,000 to 30,000, of whom only 10,000 were still able to work.

The Chinese followed and were exploited by the same cold sightlessness of the farmers as were the Indians.

The Japanese followed the Chinese in answer to the growers' insatiable demand for workers who could neither read nor speak English.

Then in the early 20th century Mexicans began to emigrate from across the border, some as wetbacks in ignorance of immigration laws, and the others as contract laborers, forced to work for whomever they were told under terms set by the employer. Although contract labor was outlawed by public immigration law, California growers received, during World Wars I and II a special dispensation to use Mexican contract workers. In one year, total importation of contract workers or "braceros," meaning "arm men," reached 500,000, of whom 100,000 went to California. These unfortunate laborers, who, as of this day realistically belong neither to Mexico or to the United States, suffer inhumane treatment, working in inhumane conditions, all for inhumane wages.

Agriculture is exempt from the state-federal unemployment insurance system, only a minority of agricultural workers are covered by Social Security, and farm workers are still excluded from the maximum hours provisions of the Fair Labor Standards Act.

Because the LMRA exempts agricultural labor, farm workers have never been entitled to any of the benefits or security which have become a basic right of all statutory workers. This has been a 37-year policy. But through an awkward juxtaposition of facts and figures, the NLRB filed an injunction in federal court on March 9 seeking to enjoin the secondary boycotting of retail stores by the United Farm Workers.

When the NLRB filed its injunction, it contended that its investigations had uncovered a handful of non-agricultural workers employed in commercial packing sheds and represented by the UFW. This evidence, it claimed, should bring the union under section 8(b)(4) of the NLRA which deals with strikes and boycotts, and of which paragraph (B) prohibits secondary boycotting.

But there is great inconsistency in the NLRB's argument. Local, non-agricultural winery employees have often sought the UFW to represent them. In each and every case the union has refused in order to preserve its exempt status.

For example, in 1968 it was alleged that the UFW represented a contingent of peanut workers who are statutory employees under the NLRA. Injunctions were threatened by the NLRB due to the fact that the UFW would have then been under the jurisdiction of section 8(b)(4)(B) of the NLRA. Subsequently the UFW—to protect their status of exemption from the NLRA's proscription of secondary boycotts in section 8(b)(4)(B)—dissociated the handful of peanut workers. The peanut workers then formed a directly affiliated local of the AFL-CIO which dissolved within a year.

Another argument of the NLRB and the Free Marketing Council—a consortium of agri-businesses—is that the UFW is acting as an agent of the AFL-CIO, which represents statutory workers as defined in the NLRA. However, in *Di-Giorgio v. NLRB*, the U.S. Court of Appeals ruled on June 21, 1951, that:

The Board found nothing in the record to indicate that the Farm Union was acting as an agent of the National Union within the meaning of the statute.

In addition, in filing such an injunction against the UFW, the NLRB is violating Public Law 92-80 which stipulates that the NLRB is restricted from expending their own funds to file suit against an agricultural labor union.

The purpose of the National Labor Relations Board is to provide for the fair and equal treatment of management and labor. There is no justification for suddenly subjecting the United Farm Workers only to the punitive aspects of the Labor Management Relations Act, when the union has never been allowed to obtain any of the protections or benefits of the Act.

Furthermore, the significance of the NLRA's secondary boycott provision must not be overlooked. Mr. Justice Frankfurter observed:

The Taft-Hartley Act, was to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views . . .

This is relevant in that it counsels wariness in finding by construction a broad policy against secondary boycotts . . . of course 8(b)(4)(A) was designed to protect the public interest, but not in the sense that the public was to be shielded from secondary boycotts no matter how brought about.

In light of this last sentence, I believe it is appropriate to any that the object of the UFW's boycotts was not to hinder commerce or sidewash neutral employers, but instead to strike and boycott those forces who, clearly allied together by common interest, are the justifiable object of a reasonable attempt by farm workers to improve their daily lives.

During the long and bitter Delano grape strike I sponsored a bill to prevent the Department of Defense from purchasing California grapes, and I introduced a similar bill with respect to the lettuce boycott in 1970-71, which sought to enact into law what was already Defense Department regulations; that "military departments shall remain impartial in, and refrain from taking a position on the merits of, any labor dispute."

On March 10, 1968, the late Reverend Dr. Martin Luther King, Jr., sent a telegram to Cesar Chavez, leader of the UFW, during the latter's hunger strike in the spring of that year. It said:

I am deeply moved by your courage in fasting as your personal sacrifice for justice through nonviolence. Your past and present commitment is eloquent testimony to the constructive power of

non-violent action. You stand today as a living example of the Ghandian tradition . . .

Joan London and Henry Anderson wrote of this:

Opponents of the farm labor movement cannot comprehend this form of power. What they cannot comprehend they cannot combat effectively. They call Chavez a "Communist," a "dues-collector." The more they rage the more irrelevant they become.

The way to deal most effectively with farm labor relations is to enact Federal legislation that would place agricultural labor under the Labor Management Relations Act, but would exclude agricultural labor from the unfair labor practice provisions which proscribe secondary boycotts and recognition picketing. This action can be justified by the fact that farm laborers deserve the same equal treatment statutory workers had enjoyed when they were at a parallel stage in their organization. The Wagner Act of 1935, from which farm laborers were exempt, permitted secondary boycotts and organizational picketing in order to equalize the bargaining strengths of workers and employers. Farm laborers must now enjoy the same rights. I urge this committee to act, and aid the desperate farmworkers in this country, create a firm balance of power, and eliminate the bitter misunderstandings which have to this day impeded the enactment of such farm labor legislation.

Mr. O'HARA. I thank you very much for your elegant statement. I thank you, too, for your remarks with respect to the bill that I have introduced.

I think it should be stated right now for the record that you have been, ever since I first came to Congress, among the forefront of those who have shown concern for the disadvantaged element of our society, particularly for the farm worker. Your concern for the welfare of the farmworker is well known and your presence here today is further proof of your dedication.

I thank you for appearing before us.

Mr. RYAN. Thank you very much, Mr. Chairman. It is a pleasure to appear before you.

Mr. O'HARA. Our concluding witness today will be the gentlewoman from Hawaii, Mrs. Mink. Mrs. Mink is a member of the Education and Labor Committee, and very ably represents a State which has not followed the national pattern of leaving the farmworker behind at the post whenever protective legislation has been enacted. Her comments will be of particular interest to us all.

STATEMENT OF HON. PATSY T. MINK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. Chairman, as we all know, farmworkers have been systematically excluded from major Federal legislation covering industrial workers. For example, they are not covered by the Federal unemployment compensation program. At present, Hawaii has the only State law with unemployment compensation coverage for farmworkers. Farm occupations also are excluded from most State workmen compensation laws. Only 14 of such State laws—and the Hawaii statute is among them—cover farmworkers in approximately the same way as other workers. The workmen compensation laws of eight other States

cover farmworkers, but with limitations not applicable to other covered employees.

The Fair Labor Standards Act has been Federal law since 1938, but farmworkers were excluded until the most recent amendments of the law, those enacted in 1966. Even now, farmworkers are subject to a statutory minimum of only \$1.30, much lower than that for nonfarm employees. Farm laborers do not enjoy the benefits of the time-and-one-half overtime provisions of the Federal wage and hour law. They are covered only if they work on a relatively large farm, one using more than 500 man-days of farm labor in any quarter of the preceding calendar year. I am happy to say that in Hawaii farmworkers are better treated by State law; there the minimum hourly wage applicable to farmworkers as well as to nonfarmworkers is \$1.60, and farmworkers get overtime penalty pay after 40 hours, except after 48 hours during any 20 weeks of the year.

I need not continue with detail about the legislative status of farmworkers. I know that the members of this subcommittee are already well aware of the lamentable gaps in the treatment of these employees. I turn now to one of the major Federal statutory areas where farmworkers have been left out—the area of labor-management relations.

Very little appears in the legislative history of the National Labor Relations Act of 1935, the Wagner Act, concerning the rationale for the exclusion of agricultural laborers from that law's coverage. But the little that does appear in the hearings, committee reports, and floor debates clearly indicates that the decision to exclude farmworkers was made on the grounds of expediency, not philosophy. With farmworkers included it was believed that sufficient votes might not be obtained to pass the bill, at least not in the form desired.

Representative Connery, then Chairman of the House Committee on Labor, made the following statement during floor debate on the bill that was to become the Wagner Act:

... the [House] Committee discussed this matter carefully in executive session and decided not to include agricultural workers. We hope that the agricultural workers eventually will be taken care of . . . but just now I believe in biting off one mouthful at a time. If we can get this bill through and get it working properly, there will be opportunity later, and I hope soon, to take care of the agricultural workers.

That statement was delivered 37 years ago. Since then the National Labor Relations Act has been amended on several occasions, most notably in 1947 by the Taft-Hartley Act and in 1959 by the Landrum-Griffin amendments. Farmworkers remain excluded from coverage.

It is time to remove that exclusion. Very early in the 92d Congress, in January 1971, Under Secretary of Labor Laurence H. Silberman announced that a major legislative goal of the Nixon administration in 1971 was to extend collective bargaining rights to the Nation's farmworkers. The administration's goal, according to the Under Secretary, "is to bring order to the chaotic farm labor scene that now exists by giving agricultural workers organizational rights similar to those long enjoyed by workers in other industries." Later in that year, Assistant Secretary of Agriculture Richard Lyng said much the same thing: "Farmers and farm laborers are caught in the crossfire of a battle they are powerless to stop," he stated. "It's time that the Federal Govern-

ment steps in with a farm labor law which will protect the rights of farmers, farm laborers, and consumers."

Despite these declarations of purpose and need from representatives of the Labor and Agriculture Departments, no proposal, no recommendation on this subject has been forthcoming from the Nixon administration during the 92d Congress.

Legislation tends to follow social change. And agriculture has been changing. It is no longer an industry of small family farms. Today much agricultural production is centered in corporate-type enterprises, in so-called "agribusiness." Fifty percent of the Nation's farmworkers are now found on 2 percent of the farms. The unionizing of farm labor, while not a new phenomenon, has become a much more widespread and aggressive movement than it was a decade ago. Farmworker organizing is conducted not only by the United Farm Workers Union, but also by the Teamsters, the west coast longshoremen, the packinghouse workers, and the meat cutters. Organizing goes on in California and other Western States, in Southern States such as Florida and Texas, in the Midwestern States of Michigan and Wisconsin, and, in the east, in New York and New Jersey.

And also, of course, in Hawaii. Hawaii is the only State in which almost all agricultural workers are unionized. Since the mid-1940's, plantation workers there have been members of the International Longshoremen's and Warehousemen's Union. Hawaii is one of the few States with a labor-management relations law which includes farmworkers; it recognizes for these workers the same rights to self-organization and collective bargaining as those spelled out in section 7 of the National Labor Relations Act. Our experience in Hawaii has revealed no union inclination or even desire to strike at harvest time, and has provided no indication that farm labor unions are detrimental to agriculture. Agricultural workers have achieved a high level of wages and benefits in Hawaii, a level which is the due of farm labor in every State of the Union.

Mr. Chairman, I recommend for the consideration of this subcommittee my bill, H.R. 3571. Its provisions are simple. It would bring farmworkers under coverage of the National Labor Relations Act, as amended by the Taft-Hartley and Landrum-Griffin laws. It would apply to the labor-management problems of the farming industry the specialized abilities, long experience, and well-developed body of law available through the National Labor Relations Board. It would cover all agricultural workers, except to the extent that the NLRB develops jurisdictional standards of its own which would leave the truly small farm exempt from direct Federal regulation.

My bill also would add to the NLRA a new section 8(g) to permit prehire arrangements between employer and union allowing for union shop agreements that become compulsory after 7 days, rather than 30 days as in the rest of industry other than construction, and permitting the parties to give priority in hiring to those with seniority with the employer. This provision is similar to one at present provided for construction workers in section 8(f) of the National Labor Relations Act. It is included because of the short duration of much agricultural employment with a given farm operator.

Mr. Chairman, there is no longer any question about the wisdom and need for Federal regulation of labor-management relations in agri-

culture. The only topic for discussion now is the form which such regulation should take. I consider that my bill, which is identical to Mr. Leggett's H.R. 1410, Mr. Reid's H.R. 1523, Mr. Roybal's H.R. 2546, and Mr. Ryan's H.R. 4438, is the best vehicle for such regulation. I urge its early and favorable consideration.

Mr. O'HARA. The subcommittee on Agricultural Labor of the House Committee on Education and Labor will now stand in adjournment.

(Whereupon, at 12 noon the subcommittee adjourned, subject to the call of the Chair.)

(The following materials were submitted to the subcommittee for inclusion in the hearing record on this legislation:)

Mr. JAMES G. O'HARA,
Chairman, Agricultural Labor Sub-Committee,
Washington, D.C.

DEAR MR. O'HARA: The New Hampshire Fruit Growers' Association wishes to bring to your attention the following resolution adopted at its recent annual meeting:

RESOLVED: That the New Hampshire Fruit Growers' Association go on record in support of H.R. 13981. That a copy of this resolution be sent to Congressman O'Hara and to the National Council of Agricultural Employers.

Sincerely yours,

ANDREW C. MACK,
Secretary, N.H. Fruit Growers' Association,
R.F.D. #2, Londonderry, N.H.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 4, 1972.

HON. JAMES G. O'HARA,
The Rayburn Office Building,
Washington, D.C.

DEAR JIM: Supplementing my testimony before your committee last week, I enclose, for your review, additional suggestions by my constituent, Elias H. Tuma, which I would appreciate your considering when you mark up any further bill.

Keep me advised so that I can be helpful.

Very sincerely,

ROBERT L. LEGGETT,
Member of Congress.

DAVIS, CALIF., *April 27, 1972.*

HON. ROBERT L. LEGGETT,
House Office Building,
Washington, D.C.

DEAR MR. LEGGETT: Thank you for your note of April 17 and the enclosures regarding your bill on farm labor.

I have read the material you sent very carefully and I do appreciate your position in trying to find an acceptable compromise that would pass in the House. Nevertheless, I am convinced that you can strengthen your bill by amending it in such a way as to offset the loss of their only weapons by the workers—in this regard, I would not compare what you are doing with what former Senator Murphy had proposed; I never expected anything constructive to come from him, at least not constructive for the workers.

As for your bill, I would strongly urge amending it to provide for:

1. Limitation of the postponement of a strike to one season only; that is, a delay of 60 days should not be imposed more than once.

2. Any settlement following a postponement of the strike should be retroactive to the date on which the written notice of intent to strike was issued.

3. Once the 60-day delay had expired, settlement should be based fully on collective bargaining, which incidentally could lead to voluntary arbitration. I hope that you will reconsider your bill and make it as fair as possible to all parties concerned.

Sincerely,

E. TUMA.

VIRGINIA STATE GRANGE,
Chester, Va., May 20, 1972.

HON. JAMES G. O'HARA,
Chairman, Subcommittee on Agricultural Labor, Committee on Health and Education, Washington, D.C.

SIR: I write in support of H.R. 13981 and respectfully urge favorable action by your committee.

I am in full accord with the testimony presented before your committee on May 4, 1972 by John W. Scott, Master of the National Grange.

Virginia members consistently support National Grange policy and, in fact, adopted a resolution at our last annual session affirming support of the agricultural policies of the National Grange.

Please make this letter a part of the hearing record of H.R. 13981.

Respectfully,

JOHN B. BURGESS, Master.

AMERICAN SUGAR CANE LEAGUE,
New Orleans, La., June 22, 1972.

HON. JAMES G. O'HARA,
Chairman, Subcommittee on Agricultural Labor, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR SIR: Your subcommittee presently has under consideration H.R. 13981 which, if enacted, would be known as the "Agricultural Labor Relations Act of 1972".

The American Sugar Cane League of the U.S.A., Inc., a nonprofit association organized in 1972, composed of farmers who produce more than 95% of the sugar cane grown in the State of Louisiana and of all of the processors of sugar cane into sugar, has adopted the following statement of its position concerning such proposed legislation. We request that this statement be made a part of the record of your deliberations for the information of all members of your subcommittee and other interested members of the Congress.

This association, on behalf of the sugar cane farmers and processors of Louisiana, must vigorously oppose any legislation which would require a farmer to bargain with a labor union even though designated as the bargaining agent by a majority of his employees, unless such legislation prohibits the employees from striking at any time under any conditions.

The prime function of the American farmer is to supply the American people with food. Food is the only thing or commodity, other than water and air, that the human cannot exist without for any extended period of time. The uninterrupted production of food is, therefore, absolutely essential for the maintenance of life.

There are various operations on a farm, particularly planting, cultivating and harvesting, which because of seasonal requirements must be performed within a particular time of the year, or not at all. Therefore, a strike of farmworkers could, and in many instances would result in the irreparable loss of an entire year's production. In this respect, agriculture is completely different from other industry. Although a strike adversely affects any industry, in a non-agricultural pursuit that which is not produced today can usually be produced tomorrow, or next month. To a farmer, there is no tomorrow or next month, for Mother Nature does not wait on the whims of man. The loss of an entire year's production would be of disastrous proportions and consequences for many reasons, including: (a) the essential product, in most instances food, would be irretrievably lost to the consumers; (b) the farmers could, and many would, be ruined financially and put out of business; (c) the processors of the farm commodities would suffer irreparable loss and some forced out of business; (d) the workers would face permanent loss of their jobs and livelihood resulting from the farmer and/or processor being forced out of business; and (e) the

economy of many areas which are dependent to a substantial extent on agriculture would be seriously affected.

Most farmers are dependent on loans, secured by a pledge of crop proceeds, for the production and harvest of their crops. With the effect of a strike in agriculture being so significant, lending agencies would be most reluctant to extend such credit, and in many instances would refuse to do so.

If agricultural labor relations legislation of any kind must be enacted, it should prohibit strikes and provide for the solution of disagreements between agricultural employers and employees through some type of administrative action of a farm labor board.

Therefore, we strongly recommend that H.R. 13981 receive an unfavorable report.

Respectfully submitted,

AMERICAN SUGAR CANE LEAGUE OF THE U.S.A., INC.,
JAMES H. THIBAUT, *President*.

STATEMENT BY JOHN W. SCOTT, MASTER OF THE NATIONAL GRANGE

I am John W. Scott, Master of the National Grange, with offices at 1616 H Street, N.W., Washington, D.C.

The National Grange represents over 600,000 members in 41 states and 7000 local communities. Our membership cuts across the residents of rural America, embracing farmers of all sizes, non-farm residents of rural America and others who have not only a basic inherent interest in agriculture but who have a community interest in the economic success and financial stability of farmers.

As early as 1967 the National Grange was concerned with the need for legislation to justly deal with farm labor disputes. The delegate body of the National Grange adopted the following resolution at the 101st Annual Session, held in Syracuse, New York, in November of 1967:

"FARM LABOR DISPUTES"

"Resolved, That the Grange seek legislation that would provide a fair procedure for regulation of farm labor disputes, with provisions that some method of settlement be devised in order that perishable crops of fruits and vegetables will not be lost due to a labor dispute or strike."

The voice of the Grange and of other interested persons went unheeded and we have seen since that time boycotts, coercion, intimidation and constant labor unrest among farm employers and employees. We have felt and continue to feel that the time is long past when agricultural employers, employees and consumers can afford to continue the present system, or lack of a system, of dealing with farm labor disputes.

The farm labor unrest of the past several years and the tactics used by those who are attempting to organize farm workers would not have been necessary if in 1967 the Grange call for new legislation had met with success. Because of the "grape boycott", the National Grange adopted the following resolution at its 102nd Annual Session, held in Peoria, Illinois, in November of 1968:

"GRAPE BOYCOTT"

"Whereas, the United Farm Workers' Organizing Committee has attempted to strike California grape growers; and

"Whereas, in so attempting to strike the UFWOC has intimidated and coerced other workers who are satisfied with working conditions and wages of the grape growers; and

"Whereas, the UFWOC has further enlisted the aid of Eastern labor unions and church groups in attempts to convince chain stores not to buy and stock any California grapes; and

"Whereas, this so-called "boycott" of California grapes now involves table grape growers, many of whom could be forced out of business or into crops other than grapes and which, in turn would put an end to jobs for many workers, if present UFWOC tactics succeed; and

"Whereas, such a practice could spread to growers and workers of other perishable crops if markets can be denied one commodity; therefore, be it

"Resolved, That the National Grange voice its opposition to the tactics of the UFWOC in that the growers should not be forced into recognizing unions that their workers do not want, and that the National Grange use all its influence to strongly and vigorously oppose the boycott of California grapes."

I would like to repeat, Mr. Chairman, that the boycott would not have been necessary if legislation had been passed to deal with such farm labor disputes. The hard feelings between employer and employee would not have developed and all the rest that went with the labor dispute in California and elsewhere would not have taken place—if agriculture had had legislation to deal with farm labor disputes. Therefore, I'm certain that the above resolution would not have been forthcoming from the Grange.

Once again, in 1970, the National Grange delegate body spoke out for meaningful legislation to cover farm labor disputes by adopting the following resolution:

“AGRICULTURAL LABOR”

“Whereas, the Grange has always respected labor's right to organize, and
“Whereas, there is virtually no body of laws regulating organization of Farm Labor, be it.

“Resolved, That the National Grange recommend to Congress that legislation be enacted which would establish a National Labor Relations Board for Agriculture, define both the rights and responsibilities of all parties concerned, prohibit secondary boycotts, prohibit strikes at harvest time and insure orderly and harmonious labor relations between the unions and the farmers of this nation.”

In our judgment, this position by the National Grange speaks to the heart of the issue—we respect labor's right to organize; however, it should be conducted so as to insure orderly and harmonious labor relations between the unions and the farmers. No one gains from labor disputes that affect the flow of food from farm to market—not the farmer, the employer or the consumer.

The interference with the flow of food from the farm to market, because of a boycott or other forms of market disruption, infringes upon the rights of many innocent third parties who are not parties to the dispute. It may well be a smaller farmer growing the same crop in another state and, most damaging of all, it forces consumers to use their economic purchasing power to help determine a labor dispute in which they have no personal knowledge and it denies consumers the freedom of choice in their food purchases.

This situation led to the adoption by the National Grange of the following resolution at the 1969 Annual Session:

“CONSUMER BOYCOTTS”

“Recognizing the right of the individual to purchase or to abstain from purchasing any agricultural product, we would point out that organized boycotts either in connection with labor-management relations or for the purpose of price manipulation are an infringement of the rights of the individual and detrimental to long-range consumer and producer interests.

“We therefore urge that legislation be enacted making it illegal for any organization now existing or organized for the purpose of promoting a consumer boycott to use the mails to solicit support of a boycott, to advertise in any news media in promoting a boycott or otherwise promote a boycott of agricultural produce.”

“PROHIBITING INTERFERENCE WITH THE MARKETING OF AGRICULTURAL COMMODITIES”

“The National Grange believes that interference with the marketing or the normal flow to market of agricultural commodities produced or grown on the farms of the United States is detrimental to the interests of producers and consumers and is also destructive of the right of consumers to have available and be able to purchase agricultural commodities of their choice. We therefore support the enactment of legislation making it unlawful, with respect to any agricultural commodity, after it leaves the farm where grown or produced, (1) for any person to threaten or engage in arson, picketing, libel, slander, injury or threat of injury to person or property, or other coercive conduct, having as its purpose or effect the preventing of any handler from acquiring, handling, purchasing, processing, selling, transporting or distributing any such agricultural commodity, or (2) for any person to enter into any contract, combination or conspiracy with any handler (or for any handler to enter into any such contract, combination or conspiracy) for the purpose or having the effect of causing such handler to cease or refrain from acquiring, purchasing, selling, offering to

sell, processing, transporting, or otherwise dealing in or handling any such agricultural commodity. Violations should be punishable by the assessment of civil penalties in suits brought by the United States, and persons aggrieved or injured should be entitled to seek injunctive relief as well as treble damages and reasonable attorneys' fees."

Mr. Chairman, please excuse me for repeating myself, but this type of reaction by the public and members of the Grange would not have been necessary if we had had the benefit of the provisions of the legislation now pending before this subcommittee.

In the Grange's continuing attempts to be responsive to the needs of farm employers, employees and the general public, the delegate body, at the 105th Annual Session of the National Grange, adopted the following resolution that sets forth the main provisions of legislation to deal with farm labor disputes:

"FARM LABOR

"Whereas, the growing and harvesting of crops, including fruit, is subject to many hazards of nature; and

"Whereas, many crops are particularly susceptible to becoming unmarketable if there is a slight harvesting delay; and

"Whereas, the grower often has his total capital invested in a single year's crop; and

"Whereas, secondary boycotts, being used to restrict marketing of crops which are involved in labor disputes, are not regulated by federal or state laws; and

"Whereas, such boycotts result in hardship on consumers and retail food handlers; and

"Whereas, farm workers are being denied the right to choose whether they wish to be represented or not represented by a union in most instances where farm labor disputes now exist; and

"Whereas, this lack of established procedure presents a serious situation as demonstrated in the recent conflicts in the grape, lettuce and other farm industries in California; therefore

"Be it resolved, (1) That the National Grange support and seek passage of federal and/or state legislation which will provide protection for the worker, the farmer, and the consumer by:

"(a) providing a procedure under which workers can vote by secret ballot on the question of union representation;

"(b) protecting the workers from unfair labor practices by unions or employers and protecting farmers from unfair labor practices by unions or employees;

"(c) prohibiting secondary boycotts;

"(d) providing a method to eliminate strikes or work stoppages at harvest time; and

"(e) establishing an orderly procedure for resolving disputes between farm workers and their employers; and

"(f) prohibit the exclusive use of a hiring hall for agriculture; and

"(g) exclude the employer with two or less employees; and

"(h) that legislation be enacted which would establish an Agriculture Labor Relations Board."

Therefore, Mr. Chairman, the National Grange is in support of H.R. 13981, a bill to provide for the establishment of an Agricultural Labor Relations Board for the purpose of regulating the agriculture industry and agricultural labor.

We are opposed to bills pending before this subcommittee that would simply include agricultural labor under the National Labor Relations Act. This Act was developed to deal with industrial labor problems. The differences between farmer-worker relationships and industrial labor relationships are substantial and the application of this Act to agriculture would be, in our judgment, unworkable and undesirable.

The rules, regulations and procedures of NLRB are not designed to meet the special needs of farmers. Producers of perishable commodities, that segment of agriculture that still demands a large amount of hand labor, need protection against strikes and boycotts at critical periods. A strike that would interfere with or stop the harvest of a perishable commodity would cause farmers to lose a full year's income as well as a substantial investment in producing a crop.

Although there are various reasons for our opposition to the extension of the National Labor Relations Act to agriculture, the most important and generally acceptable reason is the fact that NLRB is overloaded, and the average period required to handle cases filed with NLRB is excessive.

The total intake of cases filed with NLRB has increased from 15,088 in 1950, to 21,527 in 1960, to 33,582 in 1970, and 37,212 in 1971. This heavy and growing burden has resulted in long delays in handling cases. The following information for fiscal year 1971 has been supplied by NLRB:

Unfair Labor Practice Cases Median Number of Days

Informal disposition (withdrawn, compromised, etc.)-----	44
Formal disposition from filing of charge to issuance of complaint-----	59
From filing complaint to trial examiner hearing-----	62
Close of trial examiner hearing to examiner's decision-----	80
Trial examiner decision to Board decision-----	141
Cumulative—from filing of charge to Board decision-----	342

In representation cases (elections) the median period for informal disposition was 52 days—with much longer periods for formal dispositions.

The excessive delays in handling cases by the NLRB are serious enough with respect to industrial or commercial disputes. In the case of agriculture, with its short harvest season and its perishable crops which must be moved in a period which is often days or weeks, the time lag, so far as both farmers and workers are concerned, would be intolerable. By the time NLRB got around to deciding many agricultural disputes, workers would be scattered and crops marketed (or lost).

Imperative essentials for satisfactory handling of representation and unfair practice cases in agriculture are expeditious procedures, special handling, and an understanding of the character of agricultural production and marketing operations. This is going to require a separate agency, people with specialized experience, and readiness to use innovative and short-cut procedures to deal effectively with problems as they arise.

Any hope that the overloaded NLRB could accomplish this would be illusory and we respectfully request that this approach to bringing harmony to farm labor disputes be rejected.

Therefore, Mr. Chairman, it is the judgment of the National Grange that the best solution to the problems that face the farmer, the worker and the consumer is to pass H.R. 13981.

We appreciate this opportunity to bring to the subcommittee's attention the views of the National Grange on this very important legislation. Farm labor disputes have been, and remain, a deep concern of the Grange and we hope that this subcommittee, in its wisdom, will report H.R. 13981 to the full committee for enactment by the Congress. Only in this way will the welfare of all concerned be protected and at the same time bring about harmonious relations and labor peace to the farm lands of our Nation.

ALABAMA FARM BUREAU FEDERATION,
Montgomery, Ala., April 18, 1972.

HON. TOM BEVILL,
U.S. House of Representatives,
Washington, D.C.

DEAR TOM: We are informed that the House Farm Labor Subcommittee is now conducting hearings on the Farm Labor Relations Bills. This is an issue of utmost importance to agriculture and the farmers of this state. Your interest and consideration of the following policy would be appreciated:

"Farmer employers are concerned over the lack of laws and procedures to deal effectively with the problems associated with farm-labor unionization.

"We vigorously oppose the inclusion of agriculture under the National Labor Relations Act since this Act was developed to deal with industrial labor problems. The differences between farmer-worker relationships and industrial relationships are substantial, and the application of this to agriculture would be undesirable. The rules and procedures of the National Labor Relations Board are not designed to meet the special needs of farmers. Farmers need protection against strikes and boycotts at critical periods. A strike or boycott at harvest time can cause farmers to lose a full year's income as well as a substantial investment in producing a crop.

"We recommend the enactment of legislation governing the relationships between farmers and farm workers within these major guidelines:

- "(1) Administration by an independent farm-labor relations board.
- "(2) Secret balloting by workers.
- "(3) Prohibition of secondary boycotts.
- "(4) A requirement that a union file notice of intention to strike and an option to farmers in such cases to defer this strike by calling for arbitration of the dispute.
- "(5) Exemption of small farms.
- "(6) Preservation of state laws relating to compulsory unionism and the right of states to enact legislation in this area.
- "(7) Authorization for farmers to obtain damages for unlawful strikes or boycotts.
- "(8) Provision that the election and bargaining unit shall be the employees of a farmer or particular categories of employees."

Several bills have been referred to the Farm Labor Subcommittee. Three of the bills provide for the administration of farmer-worker relationship by a separate Agricultural Labor Relations Board. These bills are H.R. 1689, Talcott; H.R. 10459, Veysey; and H.R. 13981, Leggett, which we support.

We do not agree with every aspect of these bills, but they do encompass many areas of our policy.

We would, however, appreciate your support of H.R. 13981, Leggett, which is more in line with the thinking of the farmers of this state.

Best wishes.

Sincerely,

J. D. HAYS, *President.*

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION, PRESENTED BY
MATT TRIGGS, ASSISTANT LEGISLATIVE DIRECTOR

We welcome the opportunity to present Farm Bureau's views concerning the enactment of farm labor relations legislation.

At the most recent annual meeting of the American Farm Bureau Federation in December 1972, the official voting delegates of the member State Farm Bureaus recommended the enactment of legislation to provide a framework of law governing the relationships of farmers and farm workers, pursuant to the following guidelines:

- (1) Secret balloting by workers.
- (2) Prohibition of secondary boycotts.
- (3) Administration by an independent farm labor relations board.
- (4) A requirement that a union file notice of intention to strike and an option to farmers in such cases to defer this strike by calling for arbitration of the dispute.
- (5) Exemption of small farms.
- (6) Preservation of state laws relating to compulsory unionism and the right of states to enact legislation in this area.
- (7) Authorization for farmers to obtain damages for unlawful strikes or boycotts.
- (8) Provision that the election and bargaining unit shall be the employees of a farmer or particular categories of employees.
- (9) Specific prohibition of featherbedding or any practice requiring the continued employment of unneeded workers.

Bills referred to the Subcommittee which would most nearly accomplish these objectives are H.R. 1689 by Representative Talcott; H.R. 10459 by Representative Veysey; and H.R. 13981 by Representatives Leggett, Quie, Ullman, and Teague.

We want to express our appreciation to all of these members of Congress for their interest in the subject at issue.

We support the enactment of any of these bills. H.R. 13981, having bipartisan backing, would appear to have the best prospects for enactment. We shall therefore discuss hereafter major provisions of H.R. 13981—although many of our comments are equally applicable to other bills.

We do not intend the above endorsement to indicate support for each and every section and paragraph of H.R. 13981. We recognize that legislation is usually a compromise between varying points of view. H.R. 13981 is the result of many compromises. We shall indicate in subsequent sections of this statement a few of the points at which we believe consideration may appropriately be given to modification of the language, without impairing the balance sought between the interests of farmers and workers.

2. SECRET BALLOT ELECTIONS

We support the right of farm workers to join a union and to determine by majority vote, by secret ballot whether or not they wish to designate a bargaining representative and, if so, the representative to be designated. No better means of determining majority choice has been devised.

No such right is now provided except in a few states (Wisconsin, Kansas, Idaho, and Arizona) which have enacted farm labor relations statutes.

In recent years farmers too often have been compelled by the economic pressures of market boycotts to decide that their employees must join a union and which union. This is a responsibility which farmers should not exercise and do not want to exercise. Decisions in such matters should be made by workers themselves through secret ballot elections.

The right of free choice by workers would be provided by the enactment of H.R. 13981.

3. SECONDARY BOYCOTTS

H.R. 13981 would provide the same definitions and the same restraints with respect to secondary boycotts for agriculture as are now provided for industry. The language of these provisions is the result of long and careful study by the Congress over many years.

4. ADMINISTRATION

A major difference in the bills introduced on this subject is that some provide for administration of farmer-farm worker relationships by the National Labor Relations Board while others would establish an independent Agricultural Labor Relations Board.

Administration of such relationships can be effectively accomplished only by an independent Agricultural Labor Relations Board.

NLRB is already overwhelmed by a rapidly growing number of cases. Case intake has increased as follows:

<i>Fiscal year</i>	<i>Number of cases received</i>
1950	15,088
1960	21,527
1970	33,581
1971	37,212
1972	41,039

This heavy workload has resulted in substantial time lags in the handling of cases. The following information has been provided by the National Labor Relations Board.

In fiscal 1972, the median number of days of elapsed time between the receipt of an unfair practice allegation and the issuance of a complaint by NLRB was 51 days; the median number of days between the issuance of a complaint to the close of the hearing by a trial examiner or judge was 65 days; the median number of days from the close of the hearing to the issuance of a proposed decision by the trial examiner was an additional 83 days.

Thus the total elapsed time (median number of days) between the filing of a charge that an unfair labor practice had been committed and the issuance of a proposed decision by the trial examiner was 199 days.

If either party chooses to exercise his full appellant rights, a year, two years, or even longer may elapse before final disposition.

This time schedule would be disastrous to the interests of both farmers and workers. Settlement of unfair labor practice cases in agriculture must occur within a period of days or weeks, not months or years, if the procedure is to serve the needs of the parties.

Any statutory enactment for agriculture must provide expeditious handling of unfair labor practice cases and elections.

The most important means of providing expeditious handling is a separate independent Agricultural Labor Relations Board with its own personnel and field offices. Its personnel should have an agricultural background and a familiarity with the special character of the problems involving farmers and farm worker relationships. The motto to be posted in every employee's office should be "Let's get going—let's do it today."

The second requisite for expeditious handling is statutory provisions such as those set forth in Sec. 6(a) and 14(c) (3) of H.R. 13981, permitting short cuts, innovative procedures, and special handling of critical situations.

Separate administration of farm labor relations cases would not be unprecedented. Railroad and airline labor relations are not administered by NLRB. Further, Federal Labor Relations Board governs labor relations between federal agencies and federal employees.

5. ARBITRATION PROCEDURE

Section 13 of H.R. 13981 provides that, when the parties are unable to reach agreement on terms and conditions of employment, either party may request arbitration and the party requesting arbitration will be bound by the arbiter's decision if it is accepted by the other party.

This concept was first advanced by then-Secretary of Labor George Shultz. It represents a compromise between the views of (1) those who oppose any restriction on the right to strike at harvest time, and (2) those who realize that a harvest time strike can often bankrupt and in most cases financially cripple a farmer. We would prefer an outright prohibition of a harvest time strike—but it appears to us that Section 13 represents a fair compromise of conflicting interests.

There will be occasions when a farmer, with many thousands of dollars invested in a crop which is ready for harvest, may be faced with unreasonable and arbitrary demands. A farmer is uniquely vulnerable under such circumstances. No other type of employer can suffer as heavy losses from a strike as can a farmer.

We think that farmers will use this procedure only rarely. The price, acceptance of the arbitration award, is high. But we believe it should be included as an optional procedure in a farm labor relations act.

6. UNION SHOP PROVISION

Section 14 (b) of H.R. 13981 contains the same compromise with respect to union shop contracts as is contained in Section 14 (b) of the National Labor Relations Act.

As members of the Committee know, Farm Bureau has long opposed compulsory unionism and has opposed repeal of Section 14 (b) of the National Labor Relations Act. However, we realize that no bill which includes a national right-to-work provision applicable in agriculture can be enacted.

We realize, too, that if no legislation is enacted there will be a substantial amount of compulsory unionism. For example, in the grape and lettuce industries in California, workers have had no opportunity to decide representation questions for themselves. The workers in such industries may be satisfied with the unions which now represent them. But no one knows. Elections have not been held. If grape growers who now have contracts with the United Farm Workers Union should decide instead to sign contracts with the Teamsters Union—or if lettuce growers who now have contracts with the Teamsters Union should decide to sign contracts with UFWU—the workers would have no statutory right to participate in these decisions. In either case, if a majority of workers should prefer individual, rather than collective bargaining, no procedure is available whereby they might seek a change.

The enactment of H.R. 13981 would provide workers a right and an opportunity to decide for themselves as to questions of representations.

The enactment of H.R. 13981 would result in less compulsory unionism than if no legislation is enacted.

7. AMENDMENTS

We submit the following recommendations to the Committee with respect to amendment of the provisions of H.R. 13981.

These amendments would not disturb the balance between the conflicting interests of farmers and farm workers, which the authors of H.R. 13981 have sought to achieve.

(1) Section 14 (c) (3) of H.R. 13981 provides as follows:

The Board is authorized and directed to administer the provisions of this Act with due regard to the special characteristics of agriculture and employment in agriculture.

In order to insure that the statute express the need for expeditious and innovative procedures so requisite in agriculture, we recommend the addition of the following language to the above quoted paragraph:

"and particularly the need for expeditious action in the handling of representation and unfair labor practice cases in agriculture."

(2) Section 2(3) of H.R. 13981 provides that the statute would be applicable to any farmer who employed more than five-hundred mandays of agricultural labor during any calendar quarter of the preceding calendar year. We suggest that a better test of coverage would be 1200 or 1500 mandays of agricultural labor in the prior calendar year.

(3) Section 8(a) (6) defines as an unfair labor practice any action "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed." This is the same as the language of the comparable provision of the NLRA. It is generally recognized that this has not "effectively prevented featherbedding" practices in industry. Agriculture is probably the most rapidly changing, technologically progressive, and innovative sector of the economy. Change and adaptation are often essential for economic survival. Any efficiencies of change result in benefits to the public. We therefore recommend the inclusion of more effective language in this Section.

(4) Section 8(a) (7) provides that it shall be an unlawful labor practice to knowingly employ an alien unlawfully in the United States.

In 1972, the House approved an amendment to the Immigration and Nationalization Act dealing with this issue. It appears to us that this is the appropriate way to approach this problem, rather than to include it in a labor management statute.

Further, it should be noted that most employers are unable to distinguish between a U.S. citizen of Mexican ancestry and a Mexican national unlawfully in the U.S. Most of the latter carry documentary evidence (either forged or relating to another person) indicating their right to be in this country.

If employers were to be required to carefully check the status of each prospective worker, this would be discriminatory with respect to U.S. citizens of Mexican ancestry.

We therefore recommend that this provision be deleted.

(5) Section 8(d) of the NLRA provides (i) that neither party to a contract may terminate the contract except by 60-day written notice; (ii) that the termination notice must indicate willingness to meet to negotiate a new contract; and (iii) that a strike or lockout during the 60 day period is prohibited. Section 8(d) of H.R. 13981 while otherwise similar to Section 8(d) of the NLRA, omits the provision prohibiting a strike or lockout during the 60-day period. We urge that Section 8(d) of H.R. 13981 be corrected to be comparable to Section 8(d) of the NLRA in this respect.

8. CONCLUSION

We wish to express our appreciation for the attention given to this issue by the Subcommittee. We respectfully urge your favorable action on H.R. 13981 or similar legislation introduced in 1973.

ONTARIO, OREG.

JAMES O'HARA,
Chairman, The Farm Labor Subcommittee of the House Committee on Education
and Labor, House Office Building, Washington, D.C.:

We support the Agriculture Labor Relations Act and urge your approval.

MALHEUR COUNTY FARM BUREAU,
Ontario, Oreg.

TEMPE, ARIZ., May 18, 1972.

Mr. JAMES G. O'HARA,
Chairman, Subcommittee on Agriculture,
Washington, D.C.

DEAR MR. O'HARA: Representing the Granges of the state of Arizona, I would like to say that we here are supporting H.R. 13981 because we feel that it will answer a lot of our agricultural Labor problems in Arizona.

As perhaps you know we in this state need a lot of hand labor in our row crop type of farming and this bill will be a great help to us as well as protect the rights of our farm laborers. Due to the press of my work here it is impossible for me to testify in person before your committee, I would like to ask that this letter be read to your committee.

Sincerely yours,

IRA E. SHEA,
Deputy State Master.

WASHINGTON STATE GRANGE,
Seattle, Wash., May 19, 1972.

Representative JAMES G. O'HARA,
Chairman, Subcommittee on Agricultural Labor, Committee on Education and Labor, Washington, D.C.

DEAR REPRESENTATIVE O'HARA: I am writing in support of H.R. 13981, the Agricultural Labor Relations Act of 1971.

Here in Central Washington, we are now being threatened by the same type of farm labor organization that occurred in California and caused disruptions in that state. For the past five years, our Organization has taken the position that some means of avoiding these costly disruptions in the orderly flow of agricultural products to the consumer should be developed. Since agricultural products flow in interstate commerce only Federal legislation can be truly effective in bringing the opposing parties together in a reasonable manner.

In the interest of both the consumer, the producer, the employees and the general economic health of our country, we urge your consideration and support of H.R. 13981 as a means of avoiding these costly disruptions in the orderly flow of our food and fibre into the normal economic channels.

Please make this letter a part of the hearing record on H.R. 13981.

Sincerely,

JACK SILVERS,
Master, Washington State Grange.

OHIO STATE GRANGE,
Columbus, Ohio, May 23, 1972.

HON. JAMES G. O'HARA,
Chairman, Subcommittee on Agricultural Labor, Committee on Education and Labor, Washington, D.C.

DEAR MR. CHAIRMAN: As head of the Grange organization in Ohio, I am writing with concern about the many bills that have been introduced to your committee with regard to farm labor legislation.

I should like to lend my support, and that of many of the farmers in Ohio, to H.R. 13981 introduced by Mr. Leggett of California.

It has been our organization's feeling that there should be a separate Agricultural Labor Relations Board completely set up to deal with agricultural problems and not amend the National Labor Relations Board or Act and to give them the same power as that Board. We are concerned as farmers with secondary boycotts, about secret ballot elections, and unfair labor practices. I feel that H.R. 13981 best suits the recommendations of the Grange here in Ohio.

When we are dealing with the problems of agriculture and labor, we are looking at a whole new ball game than that we find in industry. In order to protect both the farmer and the laborer, I think it is imperative that we have a separate board and arrive at our own regulations.

I would hope that you would make my letter a part of your hearing record on H.R. 13981 so that your other distinguished colleagues may know of our thoughts and of our feelings regarding farm labor legislation. The Grange in Ohio represents some 70,000 people not all of which are farmers but all of which are concerned about our agricultural economy.

I want to thank you for the opportunity to write and pledge my assistance at any time I can be of help in the future.

With kind regards, I remain.

Sincerely,

THE OHIO STATE GRANGE,
JAMES ROSS, *Master.*

TENNESSEE STATE GRANGE,
Maryville, Tennessee, May 20, 1972.

HON. JAMES G. O'HARA,
*Chairman, Subcommittee on Agricultural Labor,
 Committee on Education and Labor,
 Washington, D.C.*

DEAR SIR: Please add Tennessee State Grange to the list of those representatives of agriculture who are opposed to placing farm laborers and employers under NLRB.

We do favor H.R. 13981, which would establish an Agricultural Labor Relations Board. We believe it could be responsive to the agricultural labor situation, as NLRB could not be.

It will be appreciated if this letter is made a part of the hearing record on H.R. 13981.

Cordially yours,

TENNESSEE STATE GRANGE,
 ALLAN W. McCOMB, *Master.*

CHANDLER HEIGHTS CITRUS GROWERS,
Higley, Arizona, August 12, 1972.

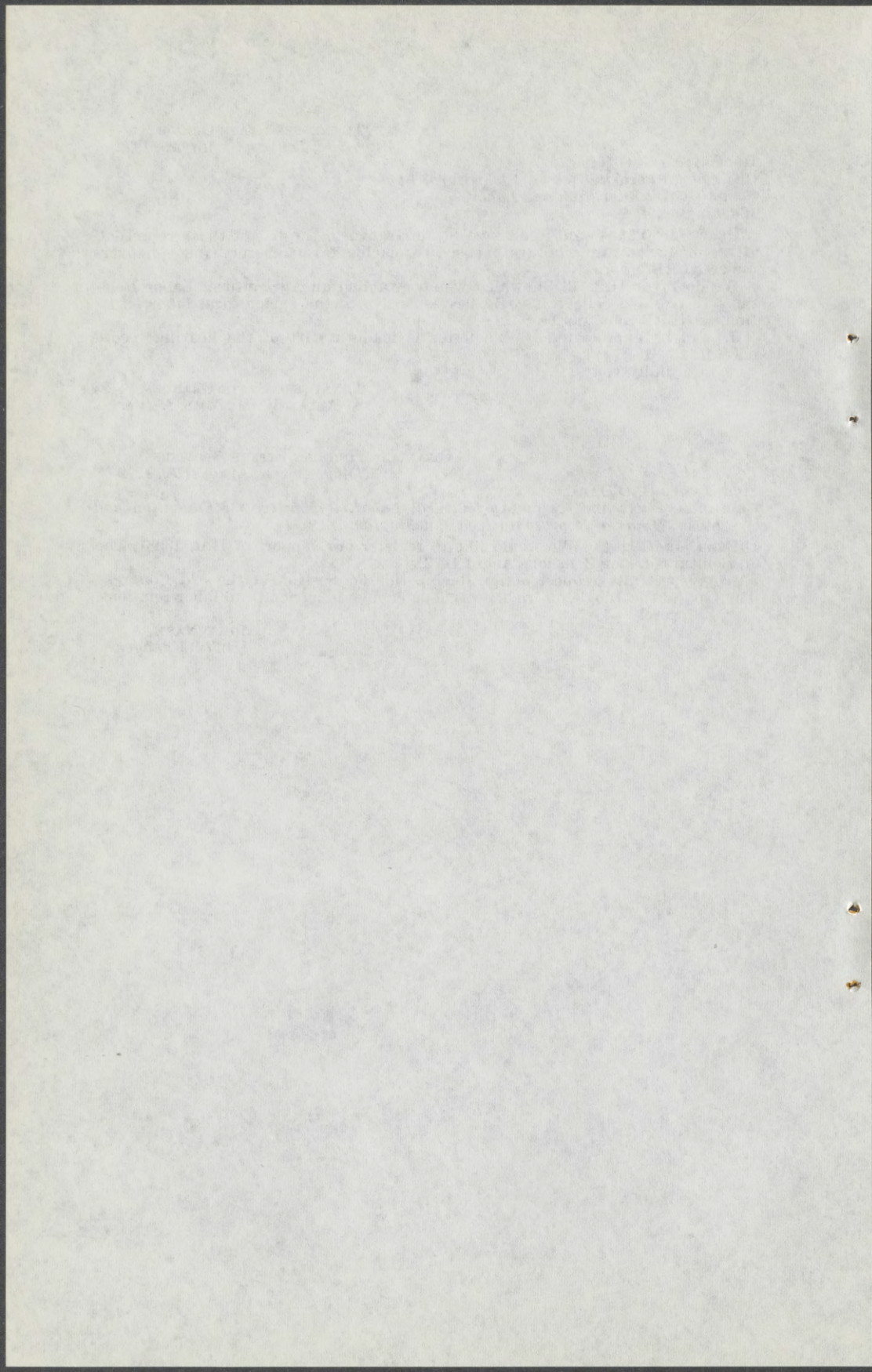
HON. JAMES G. O'HARA,
Chairman, Subcommittee on Agricultural Labor, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR MR. O'HARA: We would like to register our support of H.R. 13981, The Agricultural Labor Relations Act of 1972.

We respectfully request action during this 2d Session of the 92d Congress. The Law of the Jungle has held sway long enough in agricultural labor relations.

Sincerely,

JOHN NASH,
Office Manager,



**SUMMARIES OF LEGISLATIVE PROPOSALS
RELATING TO LABOR-MANAGEMENT
RELATIONS IN AGRICULTURE**

**As Introduced in the 92d Congress Through
April 1972**

BACKGROUND AND GENERAL SUMMARY OF PENDING LEGISLATION

A total of 13 bills (involving seven different texts) dealing with labor-management relations in agriculture have been introduced in the House and referred to the Committee on Education and Labor during the 92d Congress, through April 1972. Brief descriptions of these bills appear below, followed by a tabular presentation of their major provisions.

A. EXISTING LAW

Since all of these bills either amend present labor law or contain substantial parallels to it, a quick outline of the current law will be useful at this point.

In 1935, the Congress enacted the National Labor Relations Act, (NLRA) (July 5, 1935, ch. 372, 49 Stat. 449) which created the National Labor Relations Board, and provided the first nationwide mechanism for the conduct and regulation of labor-management relations. The rights to organize, to bargain collectively and to strike did not arise from this enactment, but they were thereafter to be exercised in accordance with its provisions, when applicable.

In 1947, the Congress enacted the Labor Management Relations Act of 1947, (known as the Taft-Hartley Act or LMRA). (June 23, 1947, ch. 120, 61 Stat. 136). This legislation substantially amended the National Labor Relations Act, which became title I of LMRA. In 1959, another set of major amendments to the basic labor law were enacted. These amendments are usually referred to as the "Landrum-Griffin amendments". (Sept. 14, 1959, Pub. Law 86-257j 73 Stat. 519).

The present law, briefly summarized, recognizes the right of employees to self-organization, and to bargain collectively through representatives of their own choosing, and to refrain from such activities except in certain union shop situations. The NLRA as it now reads establishes a National Labor Relations Board consisting of five members with staggered 5-year terms, appointed by the President with the advice and consent of the Senate. The Board has authority to determine bargaining units, and conduct secret ballot representation elections, and to investigate and judge the validity of charges of unfair labor practices. Where the Board determines that such practices exist, it may issue cease-and-desist orders, enforceable through the Federal courts.

NLRA spells out unfair labor practices by both employers and labor organizations. The former consist of interference with employees' rights of organization and collective bargaining, maintaining company unions, discrimination against union members, discrimination against persons filing charges or giving testimony under the act, and refusal to bargain. Unfair labor practices by unions include restraint or coercion of employees or employers in the exercise of their respective rights under the act, refusal to bargain, demands for illegal union security provisions, secondary boycotts (that is, boycotts or other activities directed against an employer for the purpose of inducing

him to bring pressure against *another* employer, "hot cargo" agreements (that is, agreements not to handle the goods of another employer), excessive initiation fees and featherbedding. The catalog of unfair labor practices specifically *permits* primary boycotting.

The Taft-Hartley Act created the Federal Mediation and Conciliation Service, as an independent Government agency, to assist the parties in settling a labor dispute. That law also provided procedures for the issuance of 80-day injunctions to delay strikes or lockouts which are considered by the President (and by the Federal court issuing the injunction) to "affect an entire industry or a substantial part thereof * * * and (which), if permitted to continue, will imperil the national health or safety * * *" (LMRA, sec. 208(a).)

Section 14(b) of NLRA, as amended, serves, in effect, to prohibit the union shop or other union security arrangements permitted by LMRA, in States where State law imposes such a prohibition.

Finally, and central to the current controversy, NLRA since its original enactment has contained a provision which provides that the term "employee" shall not include "any individual employed as an agricultural laborer." In addition to this exclusionary definition of the word "employee," the annual appropriation acts providing funding for the National Labor Relations Board contain a provision reading as follows:

"*Provided*, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203)." [Public Law 92-80.]

The *definition* referred to in this statutory limitation is the definition of agriculture found in the Fair Labor Standards Act, which reads as follows:

"(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." (29 U.S. Code 203(f)).

B. PENDING LEGISLATION

Of the seven different bills before the subcommittee, three cover all agricultural workers, and four cover employees of only the larger farms. Of the latter, three utilize the 500 man-days test already found in the Fair Labor Standards Act, while one (H.R. 3625) uses the "12 employee, or labor costs of \$10,000 or more" test which the Committee on Education and Labor approved in 1968 when it last reported

a bill to the House which would have brought agriculture under the NLRA.

According to U.S. Department of Labor estimates, something like 495,000 farmworkers would be covered under the 500 man-day test. The H.R. 3625 test would cover 60 percent of the hired farmwork force, on slightly under 1 percent of the farms. Four bills would utilize the National Labor Relations Board. Three would set up new regulatory agencies in this area. Six of the seven bills permit the union shop where not prohibited by State law. One (H.R. 5010) permits the union shop in any State. H.R. 5010 is also the only one of the bills which would permit secondary boycotts and "hot cargo" agreements.

One of the proposals (H.R. 1689) prohibits strikes or lockouts altogether, while two others provide for specific "cooling-off periods", invokable by one of the parties. The other four, by bringing farmworkers under LMRA, would make available the 80-day injunction in case of a national emergency strike in agriculture.

SUMMARIES OF BILLS

H.R. 1410, SPONSORED BY MR. LEGGETT, REFERRED JANUARY 22, 1971, TO HOUSE COMMITTEE ON EDUCATION AND LABOR

To amend the National Labor Relations Act, as amended, to amend the definition of "employee" to include certain agricultural employees, and to permit certain provisions in agreements between agricultural employers and employees.

Identical bills (all referred to House Committee on Education and Labor):

H.R. 1523, Mr. Reid of New York, January 22, 1971.

H.R. 2546, Mr. Roybal, January 29, 1971.

H.R. 3571, Mrs. Mink, February 4, 1971.

H.R. 4438, Mr. Ryan, February 17, 1971.

Coverage: Laborers in agriculture affecting commerce.

Provisions: Brings agricultural laborers under coverage of LMRA by striking the present exclusion of these employees in section 2(3) of NLRA.

Adds a new section, section 8(g), to NLRA, providing that it shall not be an unfair labor practice to make a prehire agreement in agriculture requiring union membership within 7 days of hiring and that priority in hiring may be given to those with seniority with the employer, in the industry or in the particular geographical area. This provision is similar to section 8(f) of the NLRA, covering the building and construction industry.

H.R. 1689, SPONSORED BY MR. TALCOTT, REFERRED ON JANUARY 22, 1971, TO THE COMMITTEE ON EDUCATION AND LABOR

The Consumer Agricultural Food Protection Act of 1971.

Coverage: An agricultural employee is defined as one who is employed by an agricultural employer, and has been so employed for at least 14 workdays during the preceding calendar month, and has been employed by that employer or another agricultural employer for at least 100 workdays during the preceding calendar year. Agricultural employees are considered such if the employer pays their wages and their work is performed for his benefit, even though there may be a crew leader middleman present.

An agricultural employer is one who meets the FLSA 500 man-day test.

Provisions: H.R. 1689 makes it unlawful to engage in any secondary boycott of agricultural products, to conduct a primary boycott or to induce an ultimate consumer to refrain from purchasing, consuming or using an agricultural commodity, except where the inducement is limited to the facts and specifically identifies the producer of each such commodity. Permissible inducement does not include publicity which identifies commodities by terms which may include the products of another producer. Also made unlawful is any strike or picketing, or threat to strike or picket where the strike or picketing would result in a cessation of operations necessary to prevent loss, spoilage or deterioration, or reduction in quality or marketability of the commodity—or where a collective bargaining agreement is in effect. Organization picketing after a petition has been filed for an election is also made unlawful.

Any aggrieved person may bring suit in any U.S. district court for an injunction against any of the above unlawful acts, and may sue for recovery of damages. A subsequent section makes unlawful arson, mass picketing, libel, slander, injury to person or damage to property, or other violent conduct where the object is to prevent the display for sale, selling or transportation of any agricultural commodity.

Title II of H.R. 1689 creates a Farm Labor Relations Board, consisting of an Assistant Secretary of Agriculture, who shall chair the Board, and two other members, appointed by the President, subject to confirmation, for staggered 10-year terms. There is created a General Counsel of the Board, with the same basic duties as the General Counsel of NLRB. The Board may delegate to regional offices of the U.S. Department of Agriculture its duties regarding the determination of appropriate bargaining units, and the conduct of elections, duties which NLRB may delegate to its regional offices.

H.R. 1689 list unfair labor practices, generally similar to those found in NLRA; union shop agreements requiring membership within 30 days, where not prohibited by State law, are permitted. The practices made unlawful earlier in the bill are also made unfair labor practices, and it is made an unfair labor practice for a union to fail

to provide a complete audited financial report to each member, within 90 days of the end of the union fiscal year. The employer's obligation to bargain collectively does not extend to any union not selected by secret ballot of his employees, and does not extend to methods, equipment and facilities to be used in producing agricultural products, or the products to be produced.

The employer may, under H.R. 1689, request an election if he alleges that an employee's representative is no longer a representative, but elections are not to be held more than once in 12 months. The Board is mandated to schedule elections "when the number of temporary employees entitled to vote does not exceed the number of permanent employees entitled to vote." (See *Coverage*, above.)

Federal Mediation and Conciliation Service provisions, and other LMRA provisions relating to suits against labor unions are spelled out in H.R. 1689, and an additional title of the bill prohibits all strikes and lockouts, providing instead for a five-member board of arbitration, which may settle disputes on a "final offer selection" basis.

H.R. 3625, SPONSORED BY MR. GONZALEZ, REFERRED FEBRUARY 4, 1971 TO HOUSE COMMITTEE ON EDUCATION AND LABOR

To amend the National Labor Relations Act, as amended, to amend the definition of "employee" to include certain agricultural employees, and to permit certain provisions in agreements between agricultural employers and employees.

Coverage: Laborers in agriculture affecting commerce, employed by an employer who during the preceding calendar year employed more than 12 employees at any time or had labor costs of \$10,000 or more.

Provisions: Brings agricultural laborers under coverage of the LMRA by striking the present exclusion of these employees in section 2(3) of the National Labor Relations Act, except that the exclusion would continue for agricultural laborers "employed by an employer who at no time during the preceding calendar year employed more than 12 employees or who during the preceding calendar year had labor costs of less than \$10,000."

Like H.R. 1410, this bill provides for a "prehire" arrangement in agriculture, like that now prevailing in construction.

H.R. 5010, SPONSORED BY MR. O'HARA, REFERRED FEBRUARY 25, 1971 TO HOUSE COMMITTEE ON EDUCATION AND LABOR

Cited as the "Farm Workers' Bill of Rights". To assure equal access for farmworkers to programs and procedures instituted for the protection of American working men and women, and for other purposes.

Note: This bill has six titles, each related to a separate aspect of farmworker legislation. Title I covers collective bargaining, title II workmen's compensation, title III manpower services, title IV wage and hour standards, title V unemployment compensation, and title VI an advisory council on farm labor. This summary covers only title I, cited in the bill as "The Farm Workers' Collective Bargaining Act".

Identical bills (both referred to House Committee on Education and Labor):

H.R. 5281, Mr. Thompson of New Jersey, March 1, 1971.

H.R. 12486, Mr. Helstoski, January 19, 1972.

Coverage: Laborers in agriculture affecting commerce.

Provisions: Brings agricultural laborers under coverage of LMRA, by striking the present exclusion of these employees in section 2 (3) of NLRA.

Exempts agricultural labor unions from the following prohibitions and limitations listed as unfair labor practices in the NLRA: (1) the secondary boycott; (2) picketing to obtain recognition from an employer or to organize workers; and (3) the "hot cargo" agreement. Two exceptions from the "hot cargo" prohibition are already provided for in the present law: (a) agreements in the construction industry relating to contracting or subcontracting of work done at the construction site, and (b) agreements relating to jobbers, subcontractors, and the like in the apparel and clothing industry.

Provides further that it shall not be an unfair labor practice by an employer or labor organization to make a prehire agreement similar to that in NLRA covering the building and construction industry.

Adds as an unfair labor practice by an employer the employment during a strike or lockout of any person not domiciled in the United States, unless such individual was already employed at that workplace immediately before the strike or lockout.

Exempts agricultural employment from section 14(b) of NLRA. The effect of this exemption is to permit the union shop for agricultural workers in commerce in all States including those which prohibit the requirement of union membership as a condition of employment.

H.R. 10445, SPONSORED BY MESSRS. SISK AND MCFALL, REFERRED
AUGUST 5, 1971, TO HOUSE COMMITTEE ON EDUCATION AND LABOR

To amend the National Labor Relations Act, as amended,
to amend the definition of "employee" to include certain
agricultural employees.

Coverage: Laborers in agriculture affecting commerce.

Provisions: Brings agricultural laborers under coverage of LMRA,
by striking the present exclusion of these employees. Section 2(3) of
NLRA.

H.R. 10459, SPONSORED BY MR. VEYSEY, REFERRED AUGUST 5, 1971
TO HOUSE COMMITTEE ON EDUCATION AND LABOR

Cited as the "National Farm Labor Relations Act". To establish a Farm Labor Relations Board to prescribe and protect the collective-bargaining rights of agricultural employees and agricultural employers, so as to avoid disruptive labor disputes in agriculture.

Coverage: Employees of an employer engaged in agriculture affecting commerce who, during any calendar quarter of the preceding calendar year, used more than 500 man-days of agricultural labor. (This coverage test is the same as that in the Fair Labor Standards Act, as amended in 1966.)

Provisions: Establishes a Farm Labor Relations Board consisting of three members appointed for 6-year terms by the President, with advice and consent of the Senate. The President shall designate one member as Chairman.

Authorizes the Board to determine appropriate units for collective bargaining, decide whether questions of representation exist, and conduct secret-ballot elections to determine selection of representatives for collective-bargaining purposes.

Establishes a General Counsel of the Board, appointed for a 4-year term by the President with advice and consent of the Senate, with final authority to investigate charges and issue complaints concerning unfair labor practices, and to prosecute such complaints.

Defines unfair labor practices by employers and labor organizations. Employer unfair labor practices include the five listed in section 8(a) of the NLRA, and also recognizing or bargaining with a union before such union has been certified by secret-ballot election as representative of the employees. Defines unfair labor practices by unions in essentially the same way as do sections 8 (b), (c), (d), and (e) of NLRA, proscribing, in addition, union picketing of an employer prior to filing for certification.

Empowers the Board to investigate charges of unfair labor practices. Should it find that an unfair labor practice exists, directs the Board to issue a cease-and-desist order. The Board may petition the appropriate court of appeals for enforcement of such order. Provides for judicial review of Board orders. This section follows section 10 of NLRA.

Permits a party charging an unfair labor practice to petition the appropriate Federal district court for a temporary restraining order for no more than 10 days. Provides for further injunctive relief beyond the 10 days upon application of the Board.

Excludes supervisors from coverage. Permits a State to prohibit the union shop.

Directs the Federal Mediation and Conciliation Service to furnish assistance in agricultural labor disputes. Directs the Farm Labor Relations Board, upon application of either party during a dispute, to prohibit strike or lockout for a period no longer than 30 days. Grants Federal district courts jurisdiction to enforce such Board orders by temporary injunction or restraining order.

H.R. 13981, SPONSORED BY MESSRS. LEGGETT, QUIE, ULLMAN, AND TEAGUE OF CALIFORNIA, REFERRED MARCH 21, 1972 TO HOUSE COMMITTEE ON EDUCATION AND LABOR

Cited as the "Agricultural Labor Relations Act of 1972". To provide for the establishment of an Agricultural Labor Relations Board for the purpose of regulating the agricultural industry and agricultural labor, and for other purposes.

Coverage: Employees of an employer engaged in agriculture affecting commerce who, during any calendar quarter of the preceding calendar year, employed more than 500 man-days of agriculture labor. (This coverage test is the same as that in the Fair Labor Standards Act, as amended in 1966.)

Provisions: Establishes an Agricultural Labor Relations Board consisting of three members appointed for 5-year terms by the President, with advice and consent of the Senate. The President shall designate one member as Chairman. Authorizes the Board to determine appropriate units for collective bargaining, decide whether questions of representation exist, and direct an election or take a secret ballot to determine selection of representatives for collective bargaining purposes.

Empowers Board to certify a union as exclusive employee representative even where the union has lost a secret-ballot election if the Board determines the election was lost because of aggravated unfair labor practices by the employer.

Establishes a General Counsel of the Board, appointed for a 4-year term by the President with advice and consent of the Senate, with final authority to investigate charges and issue complaints concerning unfair labor practices, and to prosecute such complaints.

Directs the Board to administer the act "with due regard to the special characteristics of agriculture and employment in agriculture".

Defines unfair labor practices by employers and labor organizations. Unfair labor practices by employers consist of the five listed in section 8(a) of the Taft-Hartley Act, plus the following two: (1) locking out employees in violation of the lockout limitations in section 13 of this proposal, and (2) knowingly employing illegal aliens, provided that it shall not be an employer unfair labor practice to make an agreement requiring that an agricultural employee must join the union under a union-shop agreement on or after the seventh day of his employment.

Defines unfair labor practices by unions in essentially the same way as do sections 8 (b), (c), (d), and (e) of NLRA, and also includes striking or picketing in violation of the limitations against these activities in section 13 of this proposal, provided that it shall not be an unfair labor practice for employer and union to make an agreement which requires the employer to notify the union of job vacancies or gives the union an opportunity to refer qualified applicants to the employer, as long as such agreement conforms to Board rulings to insure nonexclusive and nonpreferential procedures.

Empowers the Board to investigate charges of unfair labor practices. Should it find that an unfair labor practice exists, directs the Board to issue a cease-and-desist order. The Board may petition the appropriate court of appeals for enforcement of such order. Provides for judicial review of Board orders. This section follows section 10 of NLRA.

Permits a party charging any of the unfair labor practices specified in this provision to petition the appropriate Federal district court for a temporary restraining order for no more than 10 days. Provides for further injunctive relief beyond the 10 days upon application of the Board.

Excludes supervisors from coverage. Permits States to prohibit the union shop.

Requires 20-day notice of intent to strike or lock out. The party receiving such notice of intent may invoke one and only one 40-day period of mediation, to begin either at the end of the 20-day notice-of-intent period or at any other time during the remaining life of the contract but not beyond a 12-month period following receipt of the notice of intent. Strikes or lockouts are prohibited during the 20-day notice and 40-day mediation periods.

Directs the Federal Mediation and Conciliation Service to assist in mediating any dispute in which the 40-day period has been invoked.

Directs the Service, after passage of 20 days of the 40-day mediation period without settlement, to furnish the parties with a list of five names from which they shall choose one referee who, not less than 5 days before the end of the 40-day period, shall recommend the terms of settlement. Failing prior resolution of the dispute by the parties themselves, the referee's recommendation shall be binding upon the party invoking the 40-day mediation period if accepted by the other party during such 40 days. Such recommendation shall be deemed the contract between the parties and shall be binding unless found by a court of competent jurisdiction to be arbitrary or capricious.

If the referee's recommendation is not accepted by the noninvoking party, the parties may resort to self-help, that is, to a strike or lockout.

MAJOR PROVISIONS OF PENDING AGRICULTURAL LABOR-MANAGEMENT RELATIONS BILLS

Provisions	H.R. 1410 2546, 3571, 4438.	H.R. 1689	H.R. 3625	H.R. 5010 5281, 12486	H.R. 10445	H.R. 10459	H.R. 13981
Covers all farmworkers..	X			X	X		
Covers employers of larger farms only:							
(a) Farms using 500 man-days of agricul- tural labor in a cal- endar quarter		X ¹				X	X
(b) Farms using over 12 employees, or having labor costs over \$10,000 per annum			X				
Excludes supervisors	X	X	X	X	X	X	X
Brings farmworkers under LMRA	X		X		X		
Brings farmworkers under NLRA, excluding many Taft-Hartley and Landrum-Griffin amendments				X			
Permits union shop agreements in which farmworkers may be required to join the union within 7 days of employment	X		X	X			X
Permits union shop:				X			
(a) In any State							
(b) Only where State law does not forbid ..	X	X	X		X	X	X
Permits hiring hall arrangements							X
Administered by NLRB ..	X		X	X	X		
Establishes new Board ..		X				X	X
Permits secondary boy- cotts or hot cargo agreements				X			
Prohibits use of green carders as strike breakers				X			
Prohibits knowing em- ployment of illegal aliens							X
Prohibits strikes or lock- outs		X					
Provision for delaying strike or lockout:							
For 30 days						X	
For 40 days							X
For 80 days, in case of national emer- gency strike, as determined by President and the courts	X		X	X	X		
Secret ballot elections:							
1. for selection of bargaining representatives by workers:							
(a) Mandatory		X					
(b) required "if the Board finds a question of representation exists" ..							
2. For election of union officers ..	X ⁴	X ⁵	X ⁴	X ⁴	X ⁴	X	X ³

¹ "Agricultural employee" is defined as one who has worked for the same employer 14 days out of the previous month, and for at least 100 days for him or another agricultural employer, in the previous calendar year.

² The Chairman of the Board is an Assistant Secretary of Agriculture, and USDA regional offices perform the functions of NLRB regional offices.

³ H.R. 13981 permits the Board to certify a union as the bargaining representative even where that union has lost the election where aggravated unfair labor practices by the employer have resulted in the defeat of the union in the election.

⁴ The bills which extend NLRA to agriculture have the effect of requiring secret ballot elections of officers (or of delegates to conventions electing officers) since provisions of the Labor-Management Reporting and Disclosure Act of 1959 apply, by reference, to any labor organization certified as a bargaining representative under NLRA.

⁵ H.R. 1689 specifically directs the Board to conduct such elections.

Texts of the present law, and of pending bills, as analyzed in this document.

Other bills introduced which are identical to H.R. 1410 are: H.R. 1523 (Mr. Reid of New York), H.R. 2546 (Mr. Roybal), H.R. 3571 (Mrs. Mink), and H.R. 4438 (Mr. Ryan)

92^D CONGRESS
1ST SESSION

H. R. 1410

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. LEGGETT introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the National Labor Relations Act, as amended, to amend the definition of "employee" to include certain agricultural employees, and to permit certain provisions in agreements between agricultural employers and employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. That section 2 (3) of the National Labor
4 Relations Act, as amended, is amended by striking out the
5 following phrase: "as an agricultural laborer, or".

6 SEC. 2. Section 8 of the National Labor Relations Act,
7 as amended, is amended by adding the following new sub-
8 section (g) :

9 "(g) It shall not be an unfair labor practice under

1 subsections (a) and (b) of this section for an employer
2 engaged in agriculture to make an agreement covering
3 employees engaged (or who, upon their employment, will
4 be engaged) as agricultural laborers, with a labor orga-
5 nization of which such employees are members (not
6 established, maintained, or assisted by any action defined
7 in section 8 (a) of this Act as an unfair labor practice)
8 because (1) such agreement requires as a condition of
9 employment, membership in such labor organization after
10 the seventh day following the beginning of such employ-
11 ment or the effective date of the agreement, whichever is
12 later, or (2) such agreement provides for priority in op-
13 portunities for employment based upon length of service
14 with such employer, in the industry or in the particular
15 geographical area: *Provided*, That nothing in this sub-
16 section shall set aside the final proviso to section 8 (a) (3)
17 of this Act."

18 SEC. 3. Notwithstanding the provisions of any other
19 law, the amendments made by this Act shall take effect
20 sixty days after the date of enactment.

92D CONGRESS
1ST SESSION

H. R. 1689

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. TALCOTT introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

The Consumer Agricultural Food Protection Act of 1971.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That—

SHORT TITLE

5 This Act may be cited as the “Consumer Agricultural
6 Food Protection Act of 1971”.

STATEMENT OF FINDINGS AND DECLARATION OF POLICY

8 SEC. 2. (a) The Congress hereby finds—

9 (1) that the production and distribution of an
10 adequate supply of food at reasonable prices is essential

1 to the health and welfare of the people of the United
2 States;

3 (2) that the food industry of the United States from
4 grower to consumer is, and has proved itself to be, capa-
5 ble of satisfying the desires and needs of the American
6 consumer with wholesome products at reasonable prices;

7 (3) that the food industry of the United States has
8 developed under a system in which the role of govern-
9 ment has been to build a legal framework in which our
10 competitive system operates to make available abundant
11 quantities of healthful, appetizing food to all Americans
12 at just and fair prices;

13 (4) that in recent decades there have been dramatic
14 changes in farm technology and productivity and trans-
15 portation in the preservation and distribution of food
16 products; and

17 (5) that, because of these changes, the legal struc-
18 ture guaranteeing our food supply must be strengthened
19 in order to maintain the free flow of agricultural products
20 from the farms of the United States to the consumer of
21 such products and to assure that all who have a public
22 or economic interest in the strengthening of this frame-
23 work, including consumers, agricultural employees and
24 employers, are fairly treated.

25 (b) The Congress further finds—

1 (1) that orderly and peaceful relationships between
2 labor organizations representing or seeking to represent
3 agricultural employees and employers of those employees
4 are essential to protect the availability, quality, and
5 price of food products;

6 (2) that any interruption in those orderly and
7 peaceful relationships between labor organizations and
8 agricultural employers which interferes with the activi-
9 ties of neutral employers and employees who transport,
10 prepare for market, and market agricultural products un-
11 fairly jeopardizes the fulfillment of the needs of con-
12 sumers for adequate food supplies at reasonable prices;
13 and

14 (3) that coercive or restrictive pressures on con-
15 sumers of agricultural products unjustly jeopardizes the
16 rightful interest of consumers in such food supplies.

17 (c) The Congress also finds that agricultural employees
18 are entitled to the right to organize and bargain collectively,
19 if they so wish, in order to establish fair and equitable terms
20 and conditions of employment while maintaining an orderly
21 and peaceful employment relationship.

22 (d) Because of the perishability of agricultural prod-
23 ucts and the essential role they play in the health and well-
24 being of our country, the Congress further finds that it is
25 necessary to enact legislation specifically designed to estab-

1 lish an equitable balance between the interests of consumers,
2 agricultural employees, and employers and thereby to pro-
3 tect the production and distribution of food supplies for con-
4 sumers by establishing a legal system encompassing that
5 production and distribution.

6 (e) It is hereby declared to be the purpose and policy
7 of this Act, through the exercise by the Congress of its
8 power to regulate commerce among the several States and
9 with foreign nations, (1) to encourage and promote the
10 normal flow of agricultural products produced on the farms
11 of the United States, and to protect the consumers of such
12 products, by providing safeguards for the production and
13 distribution of agricultural products against interruption of
14 the peaceful relationships between labor organizations rep-
15 resenting or seeking to represent agricultural employees and
16 the employers of such employees, and (2) to provide an
17 orderly system under which agricultural workers may orga-
18 nize and bargain collectively, if they so wish, which is com-
19 patible with the public interest in assuring to consumers
20 adequate and wholesome food supplies.

21 **DEFINITIONS**

22 **SEC. 3.** When used in this Act—

23 (1) The term "person" includes one or more individu-
24 als, labor organizations, partnerships, associations, corpo-

1 rations, legal representatives, trustees, trutees in bankruptcy,
2 or receivers.

3 (2) The term "agriculture" includes farming in all its
4 branches which is in commerce or which affects commerce
5 and, among other things, shall include the cultivation and
6 tillage of the soil; dairying; the production, cultivation,
7 growing, and harvesting of any agricultural or horticultural
8 commodity (including commodities defined as agricultural
9 commodities in section 15 (g) of the Agricultural Marketing
10 Act, as amended) ; the raising of livestock, bees, or poultry;
11 and any practices (including any forestry or lumbering
12 operations) performed by a farmer or on a farm as an inci-
13 dent to or in conjunction with farming operations, including
14 the preparation of any agricultural commodity for market,
15 delivery of any such commodity for storage or to market or
16 to a carrier for transportation to market, and any activity
17 connected with providing housing and food for persons em-
18 ployed in agriculture.

19 (3) The term "employer" includes any person acting
20 as an agent of an employer, directly or indirectly, but shall
21 not include the United States.

22 (4) The term "agricultural employer" means any em-
23 ployer engaged in agriculture affecting commerce who, dur-
24 ing any calendar quarter during the preceding calendar
25 year, used more than 500 man-days of agricultural labor.

1 Such term shall also include any person who provides labor
2 and services on one or more farms as independent contractor
3 if such person, during any calendar quarter during the pre-
4 ceding calendar year, provided more than five hundred man-
5 days of agricultural labor. In calculating the average number
6 of agricultural employees employed by an agricultural em-
7 ployer or provided by an independent contractor, one hour
8 or more of employment in any one day shall be considered
9 one man-day and three hundred man-days shall be con-
10 sidered one man-year.

11 (5) The term "employee" includes any employee of
12 a particular employer and shall also include any individual
13 whose work has ceased as a consequence of, or in connection
14 with, any current labor dispute or because of any unfair
15 labor practice, and who has not obtained any other regular
16 and substantially equivalent employment; but such term shall
17 not include any individual—

18 (a) employed by his parent, spouse, or by an im-
19 mediate relative;

20 (b) having the status of an independent contractor;

21 (c) employed as a supervisor, or in a confidential
22 capacity or as a clerical employee, or as a guard;

23 (d) employed as a professional or technical
24 employee;

25 (e) who has quit, been discharged, or been laid off

1 from work and has no reasonable expectancy of being
2 recalled to work within sixty days from the date of
3 lay off; or

4 (f) who is a tenant or sharecropper and respon-
5 sibly directs or shares in the management of an enter-
6 prise engaged in agriculture.

7 (6) The term "agricultural employee" means any em-
8 ployee who is employed by a particular agricultural employer
9 and who has been so employed for at least fourteen work-
10 days during the preceding thirty calendar days and has been
11 employed by that employer or another agricultural employer
12 for at least one hundred workdays during the preceding
13 calendar year. If otherwise qualified, a person shall be con-
14 sidered an agricultural employee if the employer pays the
15 wages of the employee and the work is performed for the
16 employer's benefit or on his behalf, even though the super-
17 vision, bookkeeping, and the issuance of payroll checks is by
18 a person other than the employer. In calculating a workday
19 of an agricultural employee, one hour or more of employ-
20 ment in any one day shall be considered a workday.

21 (7) The term "farm" means any enterprise engaged in
22 agriculture which is operated from one headquarters where
23 the utilization of labor and equipment is determined and
24 which, if consisting of separate tracts of land, are within a
25 fifty-mile radius of the headquarters.

1 (8) The term "representatives" includes any individual
2 or labor organization.

3 (9) The term "labor organization" means any organiza-
4 tion of any kind, or any agency or employee representation
5 committee or plan, in which employees, as defined in this
6 Act or in the National Labor Relations Act, as amended (29
7 U.S.C. 151-168), participated and which exists for the pur-
8 pose, in whole or in part, of dealing with employers concern-
9 ing grievances, labor disputes, wages, rates of pay, hours of
10 employment, or conditions of work.

11 (10) The term "commerce" means trade, traffic, com-
12 merce, transportation, or communication among the several
13 States, or between the District of Columbia or any territory
14 of the United States and any State or other territory, or
15 between any foreign country and any State, territory, or the
16 District of Columbia, or within the District of Columbia or
17 any territory, or between points in the same State but
18 through any other State or any territory or the District of
19 Columbia or any foreign country.

20 (11) The term "affecting commerce" means in com-
21 merce, or burdening or obstructing commerce or the free
22 flow of commerce, or having led or tending to lead to a labor
23 dispute burdening or obstructing commerce or the free flow
24 of commerce.

1 (12) The term "unfair labor practice" means any un-
2 fair labor practice listed in section 206 of this Act.

3 (13) The term "labor dispute" includes any contro-
4 versy between an agricultural employer and his agricultural
5 employees concerning terms, tenure, or conditions of employ-
6 ment, or concerning the association or representation of per-
7 sons in negotiating, fixing, maintaining, changing, or seek-
8 ing to arrange terms or conditions of employment.

9 (14) The term "Farm Labor Relations Board" means
10 the Farm Labor Relations Board provided for in section 201
11 of this Act.

12 (15) The term "superior" means any individual hav-
13 ing authority, in the interest of the employer, to hire, trans-
14 fer, suspend, lay off, recall, promote, discharge, assign, re-
15 ward, or discipline other employees, or responsibility to
16 direct them, or to adjust their grievances, or effectively to
17 recommend such action, if in connection with the foregoing
18 the exercise of such authority is not of a merely routine or
19 clerical nature, but requires the use of independent judgment.

20 (16) The term "professional employee" means—

21 (a) any employee engaged in work (i) predomi-
22 nantly intellectual and varied in character as opposed to
23 routine mental, manual, mechanical, or physical work;

- 1 (ii) involving the consistent exercise of discretion and
2 judgment in its performance; (iii) of such a character
3 that the output produced or the result accomplished can-
4 not be standardized in relation to a given period of time;
5 (iv) requiring knowledge of an advanced type in a
6 field of science or learning customarily acquired by a pro-
7 longed course of specialized intellectual instruction and
8 study in an institution of higher learning or a hospital,
9 as distinguished from a general academic education or
10 from an apprenticeship or from training in the perform-
11 ance of routine, mental, manual, or physical processes; or
12 (b) any employee, who (i) has completed the
13 courses or specialized intellectual instruction and study
14 described in clause (iv) of paragraph (a), and (ii)
15 is performing related work under the supervision of a
16 professional person to qualify himself to become a pro-
17 fessional employee as defined in paragraph (a).
- 18 (17) In determining whether any person is acting as
19 an "agent" of another person so as to make such other person
20 responsible for his acts, the question of whether the specific
21 acts performed were actually authorized or subsequently rati-
22 fied shall not be controlling.
- 23 (18) The term "ultimate consumer" shall mean the per-
24 son who purchases an agricultural product for consumption.

1 TITLE I—PROTECTION OF AGRICULTURAL
2 PRODUCTS

3 PROHIBITED ACTS

4 SEC. 101. It shall be unlawful—

5 (a) For any labor organization or its agents, or for
6 any person acting on behalf of a labor organization or to
7 further the objectives of a labor organization—

8 (1) to induce or encourage any individual em-
9 ployed by any person engaged in commerce or in an
10 industry affecting commerce to engage in a strike or
11 a refusal to use, process, transport, display for sale,
12 sell, or otherwise handle or work on any agricultural
13 commodity after such commodity leaves the farm or
14 situs where grown or produced, or to picket or threaten
15 to picket any other person;

16 (2) to threaten, restrain, or coerce any person; or

17 (3) to enter into or maintain any contract, com-
18 bination, or conspiracy with any employer, labor orga-
19 nization, or other person where an object of any of the
20 foregoing conduct, directly or indirectly, is to force,
21 require, or persuade—

22 (a) any person to cease or refrain from using,
23 selling, displaying for sale, processing, transporting,
24 or otherwise dealing in any agricultural commodity;

1 (b) any person to enter into any unlawful
2 agreement pertaining to the production, processing,
3 transporting, marketing, or sale of any agricultural
4 commodity;

5 (c) any agricultural employer to recognize or
6 bargain with a labor organization as the representa-
7 tive of his employees unless such labor organization
8 has been certified as the representative of such em-
9 ployees after a valid secret ballot election;

10 (d) any agricultural employer to assign par-
11 ticular work to employees in a particular labor orga-
12 nization or in a particular trade, craft, or class rather
13 than to employees in another labor organization or
14 in another trade, craft, or class; or

15 (e) any employer or self-employed person en-
16 gaged in agriculture or in an industry affecting ag-
17 riculture to join any labor or employer organization.

18 (b) For any person—

19 (1) to induce or encourage the ultimate consumer
20 of any agricultural commodity, unless such inducement
21 or encouragement is limited to honest, truthful, and
22 undeceptive publicity and specifically identifies the pro-
23 ducer of such commodity; or

24 (2) to restrain, coerce, or threaten such ultimate
25 consumer, where an object thereof is to force, require, or

13

1 persuade such ultimate consumer not to purchase, con-
2 sume, or use such agricultural commodity. Permissible
3 inducement or encouragement within the meaning of
4 paragraph (b) (i) shall not include publicity of any
5 kind if such publicity identifies the producer of an agri-
6 cultural commodity by, or is directed against, any
7 trademark, trade name, or generic name which may
8 include products of another producer or user of such
9 trademark, trade name, or generic name, and shall not
10 include picketing at a retail establishment.

11 (c) For any person to initiate, participate in, conspire
12 to, or threaten a strike, picketing, or refusal to perform work,
13 in whole or in part, at a farm (i) if such action will result in a
14 cessation of operations necessary to prevent the loss, spoil-
15 age, deterioration, or reduction in grade, quality, or market-
16 ability of an agricultural commodity in commercial quan-
17 tities or (ii) if there is then in effect a collective bargaining
18 agreement with respect to labor performed or to be per-
19 formed at that farm by agricultural employees.

20 (b) For any person to picket or cause to be picketed,
21 or threaten to picket or cause to be picketed, any employer
22 where an object thereof is to induce, encourage, force, or
23 require (i) an agricultural employer to recognize or bargain
24 with a labor organization as the representative of his em-
25 ployees, or (ii) the employees of an agricultural employer

1 to accept or select such labor organization as their collective
2 bargaining representative, unless such labor organization is
3 currently certified as the representative of such employees—

4 (A) where the employer has lawfully recognized
5 in accordance with this Act any other labor organiza-
6 tion and a question concerning representation may not
7 appropriately be raised under section 207 (c) of this
8 Act;

9 (B) where within the preceding twelve months a
10 valid election under section 207 (c) of this Act has been
11 conducted; or

12 (C) where a petition has been filed under section
13 207 (c) of this Act.

14 COURT JURISDICTION

15 SEC. 102. (a) Whoever shall be aggrieved or shall be
16 injured in his business or property by reason of any viola-
17 tion of section 101 of this Act may sue in any district court
18 of the United States, without respect to the amount in con-
19 troversy or without respect to the citizenship of the parties,
20 or in any other court having jurisdiction of the parties, and
21 shall recover damages and cost of the suit. Upon the filing
22 of such suit the court shall have jurisdiction to grant such
23 injunctive relief or temporary restraining order as it deems
24 just and proper, notwithstanding any other provision of law.
25 Petitions for such injunctive relief or temporary restraining

1 orders shall be heard expeditiously. Petitions for temporary
2 restraining orders alleging a violation of section 101 (c)
3 shall be heard forthwith and, if the petition alleges that sub-
4 stantial and irreparable injury to the petitioner is unavoid-
5 able, such temporary restraining orders may be issued with-
6 out notice and shall continue in effect until the court has
7 heard and ruled upon a request for a temporary injunction.

8 (b) For the purposes of this title, district courts of
9 the United States shall have jurisdiction of a labor organiza-
10 tion (1) in the district in which such organization maintains
11 its principal office, or (2) in any district in which its duly
12 authorized officers or agents are engaged in promoting or
13 protecting the interests of employee members or in the solici-
14 tation of prospective members.

15 (c) The service of summons, subpoena, or other legal
16 process of any court of the United States upon an officer or
17 agent of a labor organization, in his capacity as such, shall
18 constitute service upon the labor organization.

19 (d) Any labor organization which represents employ-
20 ees as defined in this Act or in the National Labor Relations
21 Act, as amended (29 U.S.C. 151-168), in an industry
22 affecting commerce and any employer whose activities affect
23 commerce as defined in this Act shall be bound by the acts
24 of its agents. Any such labor organization may sue or be sued
25 as an entity and in behalf of the employees whom it repre-

16

1 sents in the courts of the United States. Any money judg-
2 ment against a labor organization in a district court of the
3 United States shall be enforceable only against the organiza-
4 tion as an entity and against its assets, and shall not be
5 enforceable against any individual member or his assets.

6 (e) For the purposes of this section, in determining
7 whether any person is acting as an agent of another person
8 so as to make such other person responsible for his acts, the
9 question of whether the specific acts performed were actually
10 authorized or subsequently ratified shall not be controlling
11 and any person acting on behalf of a labor organization or to
12 further the objectives of a labor organization shall be deemed
13 to be acting as an agent of that labor organization. Nothing
14 in this section shall be deemed to preclude an agent being
15 sued both in his capacity as an agent and as an individual.

16 SEC. 103. (a) It shall be unlawful for any person to
17 threaten or engage in arson, mass picketing, libel, slander,
18 injury to person or damage to property, or other violent
19 conduct where an object is to prevent the display for sale,
20 selling, or transportation of any agricultural commodity.

21 ESTABLISHMENT OF BOARD; TERMS OF MEMBERS; GENERAL
22 COUNSEL

23 SEC. 201. (a) There is hereby established a board which
24 shall be known as the Farm Labor Relations Board (herein-
25 after referred to as the "Board") and which shall consist of
26 three members.

1 (b) There shall be in the Department of Agriculture
2 an Assistant Secretary for Farm Labor Relations who shall
3 be a member of the Board and shall serve as its Chairman.
4 The Assistant Secretary for Farm Labor Relations and the
5 two additional members of the Board shall be appointed by
6 the President, by and with the advice and consent of the
7 Senate. One of the two additional members shall be appointed
8 for a term of ten years, and the other for a term of five
9 years; and their successors shall be appointed for terms of
10 ten years each, except that any individual appointed to
11 fill a vacancy of any such additional member shall be ap-
12 pointed only for the unexpired term of the member whom
13 he is succeeding. The two additional members of the Board
14 may be removed from office by the President upon notice and
15 hearing for neglect of duty or malfeasance in office, but for
16 no other cause.

17 (c) There shall be a General Counsel of the Board
18 who shall be appointed by the President, by and with the
19 advice and consent of the Senate. The General Counsel shall
20 have final authority, on behalf of the Board, with respect
21 to the investigation of charges and the issuance of com-
22 plaints under section 208, and with respect to the prosecution
23 of such complaints by the Board, and shall have such other
24 duties as the Board may prescribe or as may be provided by
25 law.

1 (d) Each member of the Board and the General Coun-
2 sel of the Board shall be eligible for reappointment and shall
3 not engage in any other business, vocation, or employment.
4 The duties of the Assistant Secretary for Farm Labor Rela-
5 tions shall be limited to those duties set out in this Act.

6 (e) A vacancy in the Board shall not impair the right
7 of the remaining members to exercise all of the powers of
8 the Board and two members shall, at all times, constitute
9 a quorum of the Board. The Board shall have an official seal
10 which shall be judicially recognized.

11 (f) The principal office of the Board shall be in the
12 District of Columbia, but it may meet and exercise any or
13 all of its powers at any other place.

14 (g) (1) Section 5315 of title 5, United States Code,
15 is amended by striking out "(11) Assistant Secretaries of
16 Agriculture (3)." and inserting in lieu thereof the follow-
17 ing:

18 "(11) Assistant Secretaries of Agriculture (4)."

19 (2) Such section is further amended by adding at the
20 end thereof the following:

21 "(92) Members, Farm Labor Relations Board (ex-
22 cept Assistant Secretary of Agriculture for Farm Labor
23 Relations)."

24 "(93) General Counsel of the Farm Labor Rela-
25 tions Board."

1 AUTHORITY OF BOARD; DELEGATION OF AUTHORITY

2 SEC. 202. (a) The Board may, by one or more of its
3 members or by such agents or agencies as it may designate,
4 prosecute any inquiry necessary to its functions in any part
5 of the United States. A member of the Board who partici-
6 pates in any such inquiry shall not be disqualified from sub-
7 sequently participating in a decision of Board in the same
8 case.

9 (b) The Board shall have authority from time to time
10 to make, amend, and rescind, in the manner prescribed in
11 sections 551-559 of title 5, United States Code, such rules
12 and regulations as may be necessary to carry out the pro-
13 visions of this title.

14 (c) The Board is authorized to delegate to such re-
15 gional or area offices of the Department of Agriculture as it
16 deems appropriate its powers under section 207 to deter-
17 mine the unit appropriate for the purpose of collective bar-
18 gaining as defined in section 207(b), to investigate and
19 provide for hearings, and to determine whether a question
20 of representation exists, and to direct an election or take a
21 secret ballot under subsection (c) or (e) of section 207 and
22 certify the results of such election; but the Board may review
23 any action, taken pursuant to the authority delegated under
24 this subsection, by any regional or area officer upon a request
25 for a review of such action filed with the Board by any

1 interested party. Any such review made by the Board shall
2 not, unless specifically ordered by the Board, operate as a
3 stay of any action taken by the regional or area officer. The
4 entire record considered by the Board in considering or act-
5 ing upon any such request or review shall be made available
6 to all parties prior to such consideration or action and the
7 Board's findings and action thereon shall be published as a
8 decision of the Board.

9 OFFICERS AND EMPLOYEES OF THE BOARD

10 SEC. 203. (a) The Board shall have authority to ap-
11 point an executive secretary and such attorneys, hearing of-
12 ficers, trial examiners, and other employees as it may from
13 time to time find necessary for the proper performance of
14 its duties.

15 (b) The Board may not employ any attorney for the
16 purpose of reviewing transcripts of hearings, or preparing
17 drafts of opinions, except that any attorney employed for
18 assignment as a legal assistant to any Board member may
19 for such Board member review such transcripts and prepare
20 such drafts.

21 (c) No trial examiner's report shall be reviewed, either
22 before or after its publication, by any person other than
23 a member of the Board or his legal assistant, and no trial
24 examiner shall advise or consult with the Board with re-

1 spect to exceptions taken to his findings, rulings, or recom-
2 mendations.

3 (d) The Board may establish or utilize such regional,
4 local, or other agencies, and utilize such voluntary and un-
5 compensated services, as may from time to time be needed.

6 (e) Attorneys appointed under this section may, at
7 the discretion of the Board, appear for and represent the
8 Board in any case in court.

9 (f) Nothing in this title shall be construed to authorize
10 the Board to appoint individuals for the purpose of concilia-
11 tion or mediation, or for economic analysis.

12 EXPENSES OF THE BOARD

13 SEC. 204. All of the expenses of the Board, including all
14 necessary traveling and subsistence expenses outside the
15 District of Columbia incurred by the members or employees
16 of the Board under its orders, shall be allowed and paid
17 on the presentation of itemized vouchers therefor approved
18 by the Board or any individual it designates for that purpose.

19 RIGHTS OF EMPLOYEES

20 SEC. 205. (a) Except as provided in subsection (b)
21 of this section, agricultural employees shall have the right
22 to self-organization, to form, join, or assist labor organiza-
23 tions, to bargain collectively through representatives of their
24 own choosing, and to engage in other concerted activities

1 for the purpose of collective bargaining or other mutual aid
2 or protection except to the extent that such right may impair
3 the rights of aggrieved or injured persons under title I of
4 this Act, and shall also have the right to refrain from any
5 or all of such activities except to the extent that such right
6 may be affected by an agreement requiring membership in
7 a labor organization as a condition of employment as au-
8 thorized in section 206 (a) (3).

9

UNFAIR LABOR PRACTICES

10 SEC. 206. (a) It shall be an unfair labor practice for an
11 agricultural employer—

12 (1) to interfere with, restrain, or coerce employees
13 in the exercise of the rights guaranteed in section 205;

14 (2) to dominate or interfere with the formation or
15 administration of any labor organization or contribute
16 financial or other support to it: *Provided*, That, subject
17 to rules and regulations made and published by the Board
18 pursuant to section 204, an agricultural employer shall
19 not be prohibited from permitting employees to confer
20 with him during working hours without loss of time
21 or pay;

22 (3) by discrimination in regard to hire or tenure
23 of employment or any term or condition of employment
24 to encourage or discourage membership in any labor
25 organization: *Provided*, That nothing in this Act, or in

1 any other statute of the United States, shall preclude
2 an agricultural employer from making an agreement with
3 a labor organization (not established, maintained, or as-
4 sisted by any action defined in section 206 (a) of this
5 Act as an unfair labor practice) to require as a condition
6 of employment membership therein on or after the
7 thirtieth day following the beginning of such employ-
8 ment or the effective date of such agreement, which-
9 ever is the later, (i) if such agreement is lawful under
10 applicable State laws, (ii) if such labor organization is
11 the representative of the employees as provided in sec-
12 tion 207 (a), in the appropriate collective-bargaining
13 unit covered by such agreement when made, and (iii)
14 unless following an election held as provided in section
15 207 (e) within one year preceding the effective date of
16 such agreement, the Board shall have certified that at
17 least a majority of the employees eligible to vote in such
18 election have voted to rescind the authority of such labor
19 organization to make such an agreement: *Provided fur-*
20 *ther,* That no agricultural employer shall justify any
21 discrimination against an employee for nonmembership
22 in a labor organization (A) if he has reasonable grounds
23 for believing that such membership was not available
24 to the employee on the same terms and conditions gen-
25 erally applicable to other members, or (B) if he has

1 reasonable grounds for believing that membership was
2 denied or terminated for reasons other than the failure
3 of the employee to tender the periodic dues and the
4 initiation fees uniformly required as a condition of ac-
5 quiring or retaining membership;

6 (4) to discharge or otherwise discriminate against
7 an employee because he has filed charges or given testi-
8 mony under this Act;

9 (5) to refuse to bargain collectively with the repre-
10 sentatives of his employees, subject to the provisions of
11 section 207; *Provided*, That nothing in this Act shall
12 be construed as requiring an agricultural employer to
13 bargain collectively until a representative of his em-
14 ployees has been determined by means of a valid secret
15 ballot election conducted in accordance with the pro-
16 visions of section 207.

17 (b) It shall be an unfair labor practice for a labor orga-
18 nization or its agents—

19 (1) to restrain or coerce (A) agricultural em-
20 ployees in the exercise of the rights guaranteed in sec-
21 tion 205: *Provided*, That this paragraph shall not im-
22 pair the right of a labor organization to prescribe its own
23 rules with respect to the acquisition or retention of mem-
24 bership therein: *Provided further*, That it shall be an
25 unfair labor practice under this section for a labor orga-

1 nization to threaten or impose any fine or other economic
2 sanction against any person in the exercise of rights
3 under this Act (including but not limited to the right to
4 refrain from any or all concerted activity, to refrain
5 from compliance with a union rule, policy, or practice
6 which establishes or affects wages, hours, or working con-
7 ditions at such person's place of employment, or to in-
8 voke the processes of the Board) ; or (B) an agricul-
9 tural employer in the selection of his representatives for
10 the purposes of collective bargaining or the adjustment
11 of grievances;

12 (2) to cause or attempt to cause an agricultural
13 employer to discriminate against an employee in viola-
14 tion of subsection (a) (3) or to discriminate against an
15 employee with respect to whom membership in such
16 organization has been denied or terminated on some
17 ground other than his failure to tender the periodic dues
18 and the initiation fees uniformly required as a condition
19 of acquiring or retaining membership;

20 (3) to refuse to bargain collectively with an agri-
21 cultural employer, provided it is the representative of
22 his employees subject to the provisions of section
23 207 (a) ;

24 (4) to engage in any activity or conduct defined as

1 unlawful in title I of this Act but nothing in this subsec-
2 tion (b) shall be construed as limiting the rights of
3 aggrieved or injured persons under title I of this Act;

4 (5) to require of employees covered by an agree-
5 ment authorized under subsection (a) (3) the payment,
6 as a condition precedent to becoming a member of such
7 organization, of a fee in an amount which the Board
8 finds excessive or discriminatory under all of the cir-
9 cumstances. In making such a finding, the Board shall
10 consider, among other relevant factors, the practices and
11 customs of labor organizations in the particular industry,
12 the expected duration of employment, and the wages
13 currently paid to the employees affected;

14 (6) to cause or attempt to cause an agricultural
15 employer—

16 (A) to pay or deliver or agree to pay or de-
17 liver any money or other things of value for services
18 which are not performed or not to be performed;

19 (B) to establish or alter the number of em-
20 ployees to be employed or the assignment thereof; or

21 (C) to assign work to the employees of a par-
22 ticular employer;

23 (7) to fail to furnish each of its members, within
24 ninety-one days after the close of each of its fiscal years,
25 with a copy of a report setting forth its receipts and dis-

1 bursements during its preceding fiscal year and its finan-
2 cial condition at the end of that year, together with the
3 report of an audit of the foregoing conducted by a certi-
4 fied public accountant.

5 (c) The expressing of any views, argument, opinion,
6 or the making of any statement (including expressions
7 intended to influence the outcome of an organizing cam-
8 paign, a bargaining controversy, a strike, lockout, or other
9 labor dispute), or the dissemination thereof, whether in
10 written, printed, graphic, visual, or auditory form, if such
11 expression contains no threat of reprisal or force or promise
12 of benefit, shall not (i) constitute or be evidence of an unfair
13 labor practice under any of the provisions of this title, or (ii)
14 constitute grounds for, or evidence justifying, setting aside
15 the results of any election conducted under any of the pro-
16 visions of this title. A statement of fact by either a labor
17 organization or an employer relating to existing or pro-
18 posed operations of the employer or to terms, tenure, or con-
19 ditions of employment with the employer shall not be con-
20 sidered to constitute a threat of reprisal or force or promise
21 of benefit. No employer shall be required to furnish or make
22 available to a labor organization, and no labor organization
23 shall be required to furnish or make available to an employer,
24 materials, information, time, or facilities to enable such em-
25 ployer or labor organization, as the case may be, to communi-

1 cate with employees of the employer, members of the labor
2 organization, its supporters, or adherents.

3 (d) (1) For the purposes of this section, to bargain
4 collectively is the performance of the mutual obligation of the
5 employer and the representative of the employees to meet at
6 reasonable times and confer in good faith with respect to
7 wages, hours, and other terms and conditions of employment
8 which directly affect work of the employees, or the negotia-
9 tion of an agreement, or any question arising thereunder, or
10 any question concerning the furnishing of necessary and rele-
11 vant information, if any, requested by the other party in con-
12 nection with the negotiation of an agreement or any issue
13 arising under such agreement, or requiring as a condition for
14 entering into an agreement the giving of a bond by either
15 party in a sum adequate to compensate the other party for
16 loss caused by breach of the agreement and the execution of
17 a written contract incorporating any agreement reached if
18 requested by either party. The failure or refusal of either
19 party to agree to a proposal, or to the making, changing or
20 withdrawing of a lawful proposal, or to make a concession
21 shall not constitute, or be evidence, direct or indirect, of a
22 breach of this obligation; nor shall the Board in any remedial
23 order direct either party to make any concession or agree to
24 any proposal or to make any payment of money except to
25 employees who are reinstated with back pay as provided in

1 section 208 (c) (1). This section shall not require any em-
2 ployer to bargain collectively with respect to any decision,
3 not prohibited by other provisions of this Act, or to discon-
4 tinue, contract out, sell, lease, or otherwise change, modify,
5 or dispose of his farm, equipment, or operations, or any part
6 thereof, or to determine the methods, equipment and facilities
7 to be used in producing agricultural products or the agricul-
8 tural products to be produced.

9 (2) Where there is in effect a collective-bargaining con-
10 tract covering employees in an industry affecting commerce,
11 the duty to bargain collectively shall also mean that no party
12 to such contract shall terminate or modify such contract,
13 unless the party desiring such termination or modification—

14 (A) serves a written notice upon the other party
15 to the contract of the proposed termination or modifica-
16 tion sixty days prior to the expiration date thereof, or in
17 the event such contract contains no expiration date, sixty
18 days prior to the time it is proposed to make such termi-
19 nation or modification;

20 (B) offers to meet and confer with the other party
21 for the purpose of negotiating a new contract or a con-
22 tract containing the proposed modifications;

23 (C) notifies the Federal Mediation and Concilia-
24 tion Service within thirty days after such notice of the
25 existence of a dispute, and simultaneously therewith

1 notifies any State or territorial agency established to
2 mediate and conciliate disputes within the State or ter-
3 ritory where the dispute occurred, provided no agree-
4 ment has been reached by that time; and

5 (D) continues in full force and effect, without
6 resorting to strike or lockout, all the terms and condi-
7 tions of the existing contract for a period of sixty days
8 after such notice is given or until the expiration date
9 of such contract, whichever occurs later.

10 The duties imposed upon employers, employees, and
11 labor organizations by paragraphs (A), (B), and (C) shall
12 become inapplicable upon an intervening certification of the
13 Board, under which the labor organization or individual,
14 which is a party to the contract, has been superseded as or
15 ceased to be the representative of the employees subject to
16 the provisions of section 207 (a), and the duties so imposed
17 shall not be construed as requiring either party to discuss or
18 agree to any modification of the terms and conditions con-
19 tained in a contract for a fixed period, if such modification is
20 to become effective before such terms and conditions can be
21 reopened under the provisions of the contract. Any employee
22 who engages in a strike within the sixty-day period specified
23 in this subsection shall lose his status as an employee of the
24 employer engaged in the particular labor dispute, for the pur-
25 poses of sections 206, 207, and 208 of this Act, as amended,

1 but such loss of status for such employee shall terminate if
2 and when he is reemployed by such employer.

3 REPRESENTATIVES AND ELECTIONS

4 SEC. 207. (a) Representatives selected by a secret bal-
5 lot for the purposes of collective bargaining by the majority
6 of the agricultural employees in a unit appropriate for such
7 purposes, shall be the exclusive representatives of all the
8 agricultural employees in such unit for the purposes of col-
9 lective bargaining in respect to rates of pay, wages, hours
10 of employment, or other conditions of employment:
11 *Provided*, That any individual employee or a group of em-
12 ployees shall have the right at any time to present griev-
13 ances to their employer and to have such grievances
14 adjusted, without the intervention of the bargaining repre-
15 sentative, as long as the adjustment is not inconsistent with
16 the terms of a collective-bargaining contract or agreement
17 then in effect: *Provided further*, That the bargaining rep-
18 resentative has been given opportunity to be present at such
19 adjustment. No person may serve as an officer of any labor
20 organization which agricultural employees are given the
21 right to join under section 205 of this Act unless he is elected
22 as such by secret ballot in election which is conducted by,
23 and whose results are certified by, the Farm Labor Board.

24 (b) The unit appropriate for the purposes of collective
25 bargaining shall consist of all agricultural employees of an

1 agricultural employer working at the farm or processing
2 facility where such employer grows, produces, processes, or
3 packages agricultural products unless the persons filing a
4 petition under this section and the employer involved agree
5 that a different unit is also an appropriate bargaining unit.

6 (c) (1) Whenever a petition shall have been filed, in
7 accordance with such regulations as may be prescribed by
8 the Board—

9 (A) by an agricultural employee or group of agri-
10 cultural employees or any individual or labor organiza-
11 tion acting in their behalf alleging that a substantial
12 number of agricultural employees (i) wish to be repre-
13 sented for collective bargaining and that their employer
14 declines to recognize their representative as the repre-
15 sentative defined in section 207 (a), or (ii) assert that
16 the individual or labor organization, which has been
17 certified or is being currently recognized by their em-
18 ployer as the bargaining representative, is no longer
19 a representative as defined in section 207 (a); or

20 (B) by an agricultural employer, alleging that one
21 or more individuals or labor organizations have presented
22 to him a claim to be recognized as the representative
23 defined in section 207 (a) or that an individual or labor
24 organization which has previously been certified as the
25 bargaining representative is no longer a representative;

1 the Board shall investigate such petition and if it has
2 reasonable cause to believe that a question of representa-
3 tion affecting commerce exists shall provide for an appro-
4 priate hearing upon due notice. If the Board finds upon
5 the record of such hearing that such a question of repre-
6 sentation exists, it shall direct an election by secret ballot
7 and shall certify the results thereof. The date of such
8 election shall be set at a time when the number of tem-
9 porary employees entitled to vote does not exceed the
10 number of permanent employees entitled to vote.

11 (2) In determining whether or not a question of repre-
12 sentation affecting commerce exists, the same regulations and
13 rules of decision shall apply irrespective of the identity of
14 the persons filing the petition or the kind of relief sought or
15 whether the persons filing such petition did so in good faith.
16 In no case shall the Board deny a labor organization a place
17 on the ballot by reason of an order with respect to such
18 labor organization or its predecessor not issued in conformity
19 with section 208 (c).

20 (3) No election shall be directed in any bargaining unit
21 or any subdivision within which, in the preceding twelve-
22 month period, a valid election shall have been held. Em-
23 ployees engaged in an economic strike who are not entitled
24 to reinstatement shall be eligible to vote under such regula-
25 tions as the Board shall find are consistent with the purposes

1 and provisions of this Act in any election conducted within
2 three months after the commencement of the strike. In any
3 election where none of the choices on the ballot receives a
4 majority, a runoff shall be conducted, the ballot providing for
5 a selection between the two choices receiving the largest and
6 second largest number of valid votes cast in the election. An
7 agricultural employee who has voted in a valid election shall
8 not be eligible to vote in any election at the farm of another
9 agricultural employer in the same geographical area for a
10 period of twelve months thereafter. Any agricultural em-
11 ployee who shall be found to have sought or accepted em-
12 ployment for the purposes of affecting the outcome of an
13 election shall not be eligible to vote in an election conducted
14 pursuant to the provisions of this Act for a period of twelve
15 months.

16 (4) Nothing in this section shall be construed to pro-
17 hibit the waiving of hearings by stipulation for the purpose
18 of a consent election in conformity with regulations and rules
19 of decision of the Board.

20 (d) Whenever an order of the Board made pursuant to
21 section 208 (c) is based in whole or in part upon facts
22 certified following an investigation pursuant to subsection
23 (c) of this section and there is a petition for the enforce-
24 ment or review of such order, such certification and the
25 record of such investigation shall be included in the transcript

1 of the entire record required to be filed under section 208 (e)
2 or 208 (f) , and thereupon the decree of the court enforcing,
3 modifying, or setting aside in whole or in part the order
4 of the Board shall be made and entered upon the pleadings,
5 testimony, and proceedings set forth in such transcript. The
6 court shall not enforce any order of the Board which rests,
7 in whole or in part, upon evidence adduced from witnesses
8 who have not testified under oath and who have not been
9 subject to cross-examination by opposing parties.

10 (e) (1) Upon the filing with the Board, by 30 per
11 centum or more of the agricultural employees in a bargaining
12 unit covered by an agreement between their employer and
13 a labor organization made pursuant to section 206 (a) (3) ,
14 of a petition alleging the desire that such authority be re-
15 scinded, the Board shall take a secret ballot of the employees
16 in such unit and certify the results thereof to such labor
17 organization and to the employer.

18 (2) No election shall be conducted pursuant to this sub-
19 section in any bargaining unit or any subdivision within
20 which, in the preceding twelve-month period, a valid elec-
21 tion shall have been held.

22 PREVENTION OF UNFAIR LABOR PRACTICES

23 SEC. 208. (a) The Board is empowered, as hereinafter
24 provided, to prevent any person from engaging in any unfair
25 labor practice (listed in section 206) affecting commerce.

1 This power shall not be affected by any other means of ad-
2 justment or prevention that has been or may be established
3 by agreement, law, or otherwise.

4 (b) Whenever it is charged that any person has en-
5 gaged in or is engaging in any such unfair labor practice,
6 the Board, or any agent or agency designated by the Board
7 for such purposes, shall have power to issue and cause to
8 be served upon such person a complaint stating the charges
9 in that respect, and containing a notice of hearing before
10 the Board or a member thereof, or before a designated agent
11 or agency, at a place therein fixed, not less than five days
12 after the serving of said complaint: *Provided*, That no com-
13 plaint shall issue based upon any unfair labor practice oc-
14 curring more than six months prior to the filing of the charge
15 with the Board and the service of a copy thereof upon the
16 person against whom such charge is made, unless the person
17 aggrieved thereby was prevented from filing such charge
18 by reason of service in the Armed Forces, in which event
19 the six-month period shall be computed from the day of his
20 discharge. Any such complaint may be amended by the
21 member, agent, or agency conducting the hearing or the
22 Board in its discretion at any time prior to the issuance of
23 an order based thereon. The person so complained of shall
24 have the right to file an answer to the original or amended
25 complaint and to appear in person or otherwise and give

1 testimony at the place and time fixed in the complaint. In
2 the discretion of the member, agent, or agency conducting
3 the hearing or the Board, any other person may be allowed
4 to intervene in the said proceeding and to present testimony.
5 Any such proceeding shall, so far as practicable, be con-
6 ducted in accordance with the rules of evidence applicable
7 in the district courts of the United States under the rules of
8 civil procedure for the district courts of the United States,
9 adopted by the Supreme Court of the United States pur-
10 suant to the Act of June 19, 1934 (28 U.S.C. 723-B
11 and C).

12 (c) The testimony taken by such member, agent, or
13 agency or the Board shall be reduced to writing and filed
14 with the Board. Thereafter, in its discretion, the Board upon
15 notice may take further testimony or hear argument. If upon
16 the preponderance of the testimony taken the Board shall
17 be of the opinion that any person named in the complaint
18 has engaged in or is engaging in any such unfair labor prac-
19 tice, then the Board shall state its findings of fact and shall
20 issue and cause to be served on such person an order re-
21 quiring such person to cease and desist from such unfair
22 labor practice, and to take such affirmative action includ-
23 ing reinstatement of employees with or without back pay,
24 as will effectuate the policies of this title: *Provided*, That
25 where an order directs reinstatement of an employee, back

1 pay may be required of the employer or labor organiza-
2 tion, as the case may be, responsible for the discrimina-
3 tion suffered by him: *And provided further*, That in
4 determining whether a complaint shall issue alleging a viola-
5 tion of section 206 (a) (1) or section 206 (a) (2), and in
6 deciding such cases, the same regulations and rules of de-
7 cision shall apply irrespective of whether or not the labor
8 organization affected is affiliated with a labor organization
9 national or international in scope. Such order may further
10 require such person to make reports from time to time
11 showing the extent to which it has complied with the order.
12 If upon the preponderance of the testimony taken the Board
13 shall not be of the opinion that the person named in the
14 complaint has engaged in or is engaging in any such unfair
15 labor practice, then the Board shall state its findings of fact
16 and shall issue an order dismissing the said complaint. No
17 order of the Board shall require the reinstatement of any
18 individual as an employee who has been suspended or dis-
19 charged, or the payment to him of any back pay, if such
20 individual was suspended or discharged for cause. In case
21 the evidence is presented before a member of the Board, or
22 before an examiner or examiners thereof, such member,
23 or such examiner or examiners, as the case may be, shall
24 issue and cause to be served on the parties to the proceed-
25 ings a proposed report, together with a recommended order,

1 which shall be filed with the Board, and if no exceptions
2 are filed within twenty days after service thereof upon
3 such parties, or within such further period as the Board
4 may authorize, such recommended order shall become the
5 order of the Board and become effective as therein prescribed.

6 (d) Until the record in a case shall have been filed
7 in a court, as hereinafter provided, the Board may at any
8 time upon reasonable notice and in such manner as it shall
9 deem proper, modify or set aside, in whole or in part, any
10 finding or order made or issued by it.

11 (e) The Board shall have power to petition any court
12 of appeals of the United States, or if all the courts of appeals
13 to which application may be made are in vacation, any
14 district court of the United States, within any circuit or
15 district, respectively, wherein the unfair labor practice in
16 question occurred or wherein such person resides or trans-
17 acts business, for the enforcement of such order and for
18 appropriate temporary relief or restraining order, and shall
19 file in the court the record in the proceedings, as pro-
20 vided in section 2112 of title 28, United States Code.
21 Upon the filing of such petition, the court shall cause
22 notice thereof to be served upon such person, and there-
23 upon shall have jurisdiction of the proceeding and of
24 the question determined therein, and shall have power
25 to grant such temporary relief or restraining order as it

1 deems just and proper, and to make and enter a decree
2 enforcing, modifying, and enforcing as so modified, or set-
3 ting aside in whole or in part the order of the Board. No
4 objection that has not been urged before the Board, its
5 member, agent, or agency, shall be considered by the court,
6 unless the failure or neglect to urge such objection shall be
7 excused because of extraordinary circumstances. The findings
8 of the Board with respect to questions of fact if supported
9 by substantial evidence on the record considered as a whole
10 shall be conclusive. If either party shall apply to the court
11 for leave to adduce additional evidence and shall show to the
12 satisfaction of the court that such additional evidence is
13 material and that there were reasonable grounds for the
14 failure to adduce such evidence in the hearing before the
15 Board, its member, agent, or agency, the court may order
16 such additional evidence to be taken before the Board, its
17 member, agent, or agency, and to be made a part of the
18 record. The Board may modify its findings as to the facts,
19 or make new findings, by reason of additional evidence so
20 taken and filed, and it shall file such modified or new find-
21 ings, which findings with respect to questions of fact if sup-
22 ported by substantial evidence on the record considered as a
23 whole shall be conclusive, and shall file its recommendations,
24 if any, for the modification or setting aside of its original
25 order. Upon the filing of the record with it the jurisdiction

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1 of the court shall be exclusive and its judgment and decree
2 shall be final, except that the same shall be subject to review
3 by the appropriate United States court of appeals if appli-
4 cation was made to the district court as hereinabove pro-
5 vided, and by the Supreme Court of the United States
6 upon writ of certiorari or certification as provided in section
7 1254 of title 28, United States Code.

8 (f) Any person aggrieved by a final order of the Board
9 granting or denying in whole or in part the relief sought
10 may obtain a review of such order in any circuit court of
11 appeals of the United States in the circuit wherein the
12 unfair labor practice in question was alleged to have been
13 engaged in by filing in such court a written petition praying
14 that the order of the Board be modified or set aside. A copy
15 of such petition shall be forthwith transmitted by the clerk
16 of the court to the Board, and thereupon the aggrieved party
17 shall file in the court the record in the proceeding, certified
18 by the Board, as provided in section 2112 of title 28, United
19 States Code. Upon the filing of such petition, the court shall
20 proceed in the same manner as in the case of an application
21 by the Board under subsection (e) of this section, and shall
22 have the same jurisdiction to grant to the Board such tempo-
23 rary relief or restraining order as it deems just and proper,
24 and in like manner to make and enter a decree enforcing,
25 modifying, and enforcing as so modified, or setting aside

1 in whole or in part the order of the Board; the findings of
2 the Board with respect to questions of fact if supported by
3 substantial evidence on the record considered as a whole
4 shall in like manner be conclusive.

5 (g) The commencement of proceedings under subsec-
6 tion (e) or (f) of this section shall not, unless specifically
7 ordered by the court, operate as a stay of the Board's order.

8 (h) When granting appropriate temporary relief or a
9 restraining order, or making and entering a decree enforcing,
10 modifying, and enforcing as so modified, or setting aside in
11 whole or in part an order of the Board, as provided in this
12 section, the jurisdiction of courts sitting in equity shall not
13 be limited by the Act entitled "An Act to amend the Judicial
14 Code and to define and limit the jurisdiction of courts sitting
15 in equity, and for other purposes", approved March 23, 1932
16 (29 U.S.C. 101-115).

17 (i) Petitions filed under this title shall be heard expedi-
18 tiously, and if possible within ten days after they have been
19 docketed.

20 (j) The Board shall have power, upon issuance of a
21 complaint as provided in subsection (b) charging that any
22 person has engaged in or is engaging in an unfair labor prac-
23 tice, to petition any district court of the United States
24 (including the District Court of the United States for the
25 District of Columbia), within any district wherein the unfair

1 labor practice in question is alleged to have occurred or
2 wherein such person resides or transacts business, for appro-
3 priate temporary relief or restraining order. Upon the filing
4 of any such petition the court shall cause notice thereof to be
5 served upon such person, and thereupon shall have jurisdic-
6 tion to grant to the Board such temporary relief or restrain-
7 ing order as it deems just and proper.

8 (k) Whenever it is charged that any person has engaged
9 in an unfair labor practice within the meaning of paragraph
10 206 (b) (4), the preliminary investigation of such charge
11 shall be made forthwith and given priority over all other
12 cases except cases of like character in the office where it is
13 filed or to which it is referred. If, after such investigation, the
14 officer to whom the matter may be referred has reasonable
15 cause to believe such charge is true and that a complaint
16 should issue, he shall, on behalf of the Board, petition any
17 district court of the United States (including the District
18 Court of the United States for the District of Columbia)
19 within any district where the unfair labor practice in ques-
20 tion has occurred, is alleged to have occurred, or wherein
21 the person alleged to have committed the unfair labor prac-
22 tice resides or transacts business, for appropriate injunctive
23 relief pending the final adjudication of the Board with respect
24 to such matter. Upon the filing of any such petition the dis-
25 trict court shall have jurisdiction to grant such injunctive

1 relief or temporary restraining order as it deems just and
2 proper, notwithstanding any other provision of law: *Pro-*
3 *vided further*, That no temporary restraining order shall be
4 issued without notice unless a petition alleges that substantial
5 and irreparable injury to the charging party will be unavoi-
6 dable and such temporary restraining order shall be effective
7 for no longer than five days and will become void at the
8 expiration of such period. Upon filing of any such petition,
9 the courts shall cause notice thereof to be served upon any
10 person involved in the charge and such person, including
11 the charging party, shall be given an opportunity to appear
12 by counsel and present any relevant testimony: *Provided*
13 *further*, That for the purposes of this subsection district courts
14 shall be deemed to have jurisdiction of a labor organization
15 (1) in the district in which such organization maintains its
16 principal office, or (2) in any district in which its duly au-
17 thorized officers or agents are engaged in promoting or pro-
18 tecting the interests of employee members. The service of
19 legal process upon such officer or agent shall constitute service
20 upon the labor organization and make such organization a
21 party to the suit.

22

INVESTIGATORY POWERS

23 SEC. 209. For the purposes of all hearings and investiga-
24 tions, which, in the opinion of the Board, are necessary and
25 proper for the exercise of the powers vested in it by section
26 207 and section 208—

1 (1) The Board, or its duly authorized agents or agencies,
2 shall at all reasonable times have access to, for the purpose
3 of examination, and the right to copy any evidence of any
4 person being investigated or proceeded against that relates
5 to any matter under investigation or in question. The Board,
6 or any member thereof, shall upon application of any party
7 to such proceedings, forthwith issue to such party subpoenas
8 requiring the attendance and testimony of witnesses or the
9 production of any evidence in such proceeding or investigation
10 requested in such application. Within five days after the
11 service of a subpoena on any person requiring the production
12 of any evidence in his possession or under his control, such
13 person may petition the Board to revoke, and the Board
14 shall revoke, such subpoena if in its opinion the evidence whose
15 production is required does not relate to any matter under
16 investigation, or any matter in question in such proceedings,
17 or if in its opinion such subpoena does not describe with
18 sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency
19 designated by the Board for such purposes, may administer
20 oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of
21 such evidence may be required from any place in the United
22 States or any Territory or possession thereof, at any designated
23 place of hearing.

1 (2) In case of contumacy or refusal to obey a subpoena
2 issued to any person, and district court of the United States
3 or the United States courts of any Territory or possession, or
4 the District Court of the United States for the District of
5 Columbia, within the jurisdiction of which the inquiry is
6 carried on or within the jurisdiction of which said person
7 guilty of contumacy or refusal to obey is found or resides or
8 transacts business, upon application by the Board shall have
9 jurisdiction to issue to such person an order requiring such
10 person to appear before the Board, its member, agent, or
11 agency, there to produce evidence if so ordered, or there to
12 give testimony touching the matter under investigation or in
13 question; and any failure to obey such order of the court may
14 be punished by said court as a contempt thereof.

15 (3) No person shall be excused from attending and
16 testifying or from producing books, records, correspondence,
17 documents, or other evidence in obedience to the subpoena
18 of the Board, on the ground that the testimony or evidence
19 required of him may tend to incriminate him or subject him
20 to a penalty or forfeiture; but no individual shall be prose-
21 cuted or subjected to any penalty or forfeiture for or on
22 account of any transaction, matter, or thing concerning
23 which he is compelled, after having claimed his privilege
24 against self-incrimination, to testify or produce evidence,
25 except that such individual so testifying shall not be exempt

1 from prosecution and punishment for perjury committed in
2 so testifying.

3 (4) Complaints, orders, and other process and papers
4 of the Board, its member, agent, or agency, may be served
5 either personally or by registered mail or by telegraph or
6 by leaving a copy thereof at the principal office or place of
7 business of the person required to be served. The verified
8 return by the individual so serving the same setting forth
9 the manner of such service shall be proof of the same, and
10 the return post office receipt or telegraph receipt therefor
11 when registered and mailed or telegraphed as aforesaid shall
12 be proof of service of the same. Witnesses summoned before
13 the Board, its members, agent, or agency, shall be paid
14 the same fees and mileage that are paid witnesses in the
15 courts of the United States, and witnesses whose depositions
16 are taken and the persons taking the same shall severally
17 be entitled to the same fees as are paid for like services in
18 the courts of the United States.

19 (5) All process of any court to which application may
20 be made under this Act may be served in the judicial dis-
21 trict wherein the defendant or other person required to be
22 served resides or may be found.

23 (6) The several departments and agencies of the Gov-
24 ernment, when directed by the President, shall furnish the

1 Board, upon its request, all records, papers, and information
2 in their possession relating to any matter before the Board.

3 SEC. 210. Any person who shall willfully resist, prevent,
4 impede, or interfere with any member of the Board or any
5 of its agents or agencies in the performance of duties pursuant
6 to this Act shall be punished by a fine of not more than
7 \$5,000 or by imprisonment for not more than one year, or
8 both.

9 LIMITATIONS

10 SEC. 211. (a) Nothing herein shall prohibit any in-
11 dividual employed as a supervisor from becoming or re-
12 maining a member of a labor organization, but no employer
13 subject to this Act shall be compelled to deem individuals
14 defined herein as supervisors as employees for the purpose
15 of any law, either national or local, relating to collective
16 bargaining.

17 (b) Nothing in this Act shall be construed as authoriz-
18 ing the execution of application of agreements requiring
19 membership in or the making of any payments to a labor
20 organization as a condition of employment in any State or
21 territory in which such execution or application is pro-
22 hibited by State or territorial law.

23 (c) Nothing in this Act shall be deemed to prevent or
24 bar any agency or the courts of any State or territory (in-
25 cluding the Commonwealth of Puerto Rico, Guam, and the

1 Virgin Islands) from assuming and asserting jurisdiction
2 over labor disputes not subject to this Act.

3 SEC. 212. Wherever the application of the provisions
4 of section 272 of chapter 10 of the Act entitled "An Act to
5 establish a uniform system of bankruptcy throughout the
6 United States", approved July 1898, and Act amendatory
7 thereof and supplementary thereto (11 U.S.C. 672), or
8 the provisions of the National Labor Relations Act, as
9 amended (29 U.S.C. 151-168), conflicts with the applica-
10 tion of the provisions of this Act, this Act shall prevail; but
11 in any situation where the provisions of such other Acts shall
12 remain in full force and effect.

13 SEC. 213. If any provision of this Act, or the application
14 of such provision to any person or circumstances, shall be
15 held invalid, the remainder of this Act, or the application of
16 such provision to persons or circumstances other than those
17 as to which it is held invalid, shall not be affected thereby.

18 SEC. 214. The provisions of this title shall become effec-
19 tive one hundred and eighty days after the date of enactment
20 of this Act.

21 TITLE III—CONCILIATION OF LABOR DISPUTES
22 IN INDUSTRIES AFFECTING COMMERCE

23 SEC. 301. The Federal Mediation and Conciliation
24 Service (hereinafter referred to as the "Service") estab-
25 lished pursuant to title II of the Labor Management Rela-

1 tions Act, 1967 (29 U.S.C. 171), shall furnish assistance to
2 parties in labor disputes involving agricultural employers and
3 employees and their representatives, including the services of
4 mediators familiar with agricultural operations.

5 SEC. 302. In order to prevent or minimize interruptions
6 of the free flow of commerce growing out of labor disputes,
7 agricultural employers and employees and their representa-
8 tives shall—

9 (1) exert every reasonable effort to make and
10 maintain agreements concerning rates of pay, hours, and
11 working conditions, including provision for adequate
12 notice of any proposed change in the terms of such
13 agreements;

14 (2) whenever a dispute arises over the terms or
15 application of a collective-bargaining agreement and a
16 conference is requested by a party or prospective party
17 thereto, arrange promptly for such a conference to be
18 held and endeavor in such conference to settle such
19 dispute expeditiously; and

20 (3) in case such dispute is not settled by conference,
21 participate fully and promptly in such meetings as may
22 be undertaken by the Service for the purpose of aiding
23 in a settlement of the dispute.

1 TITLE IV—SUITS BY AND AGAINST LABOR
2 ORGANIZATIONS

3 SEC. 401. Suits for violation of contracts between an
4 agricultural employer and a labor organization representing
5 agricultural employees, or between any such labor organiza-
6 tions, may be brought as provided in section 301 of the
7 Labor-Management Relations Act, 1947.

8 SEC. 402. In an action brought under section 401 to
9 enforce an agreement not to strike, picket, or lock out, such
10 court shall have power to grant such relief (including
11 injunction or temporary restraining order) as it deems just
12 and proper and its jurisdiction to grant such relief shall not
13 be limited by the Act entitled "An Act to amend the Judicial
14 Code and to define and limit the jurisdiction of courts sitting
15 in equity, and for other purposes", approved March 23, 1932
16 (29 U.S.C. 101-115) or any other provision of law.

17 TITLE V—RESTRICTIONS ON PAYMENTS TO EM-
18 PLOYEE REPRESENTATIVES

19 SEC. 501. Restrictions on payments to employee repre-
20 sentatives set forth in section 302 of the Labor-Management
21 Relations Act, 1947, shall be applicable to agricultural em-
22 ployers or associations of agricultural employers and repre-
23 sentatives of agricultural employees.

1 TITLE VI—ARBITRATION OF DISPUTES IN LIEU
2 OF STRIKE OR LOCKOUT

3 SEC. 601. No agricultural employer or agricultural em-
4 ployee shall, as a result of a labor dispute, carry on any
5 strike or lockout, but in lieu thereof each such employer and
6 employee shall have the right to avail himself of the proce-
7 duce provided in this title for the settlement of the dispute.

8 SEC. 602. If either an agricultural employer or the
9 representative of his agricultural employees believes that a
10 labor dispute between the employer and such employees
11 cannot be resolved by collective bargaining, the employer or
12 the representative may give notice to the other party and in
13 such notice designate one (1) individual as his representa-
14 tive to serve on the board of arbitration. Upon receipt of
15 such a notice, the other party may designate one (1) indi-
16 vidual to serve as his representative on such board. The two
17 representatives so designated shall as soon as practicable
18 select three (3) additional individuals to serve on such
19 board. In the event the representatives of the parties are
20 unable to agree upon one or more additional individuals to
21 serve on the board, such additional individuals shall be ap-
22 pointed by, but not from, the Farm Labor Relations Board.

23 In the event one party fails or refuses to designate a rep-
24 resentative to serve on the board or in the event a duly
25 designated representative fails or refuses to act under the pro-

1 visions of this title, then the Federal Labor Relations Board
2 shall designate a representative to act for the party until the
3 party shall designate an individual who will act as such
4 representative.

5 SEC. 603. The board of arbitration, immediately upon
6 the designation of the five individuals who are to be its
7 members, shall endeavor to obtain an agreement between the
8 parties, but in the event the dispute has not been resolved
9 within thirty days from the time the notice referred to in
10 section 602 was given, the board shall announce the terms
11 and conditions of the offer made by each side which is most
12 favorable to the other. Within five days from the date of
13 such announcement if the dispute is not sooner resolved,
14 the board of arbitration shall designate which one of the two
15 offers it believes to be the more reasonable considering all
16 the circumstances surrounding the dispute.

17 SEC. 604. The offer designated as provided in section
18 602 shall be deemed to be in full force and effect for a
19 term not to exceed twenty-four months without further
20 modification of its terms (except by agreement of the
21 parties), and shall be considered a contract between the
22 parties for the purpose of section 401.

92^D CONGRESS
1ST SESSION

H. R. 3625

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1971

Mr. GONZALEZ introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the National Labor Relations Act, as amended, to amend the definition of "employee" to include certain agricultural employees, and to permit certain provisions in agreements between agricultural employers and employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. That section 2 (3) of the National Labor
4 Relations Act, as amended, is amended by striking out the
5 comma after the phrase "as an agricultural laborer" and in-
6 serting: "employed by an employer who at no time during
7 the preceding calendar year employed more than twelve em-
8 ployees or who during the preceding calendar year had labor
9 costs of less than \$10,000,".

1 SEC. 2. Section 8 of the National Labor Relations Act,
2 as amended, is amended by adding the following new sub-
3 section (g) :

4 “(g) It shall not be an unfair labor practice under
5 subsections (a) and (b) of this section for an employer
6 engaged in agriculture, to make an agreement covering em-
7 ployees engaged (or who, upon their employment, will be
8 engaged) as agricultural laborers, with a labor organization
9 of which such employees are members (not established,
10 maintained, or assisted by any action defined in section 8 (a)
11 of this Act as an unfair labor practice) because (1) such
12 agreement requires as a condition of employment, member-
13 ship in such labor organization after the seventh day follow-
14 ing the beginning of such employment or the effective date
15 of the agreement, whichever is later, or (2) such agreement
16 provides for priority in opportunities for employment based
17 upon length of service with such employer, in the industry,
18 or in the particular geographical area: *Provided*, That noth-
19 ing in this subsection shall set aside the final proviso to
20 section 8 (a) (3) of this Act.”

Other bills introduced which are identical to H.R. 5010 are H.R. 5281 (Mr. Thompson of New Jersey), and H.R. 12486 (Mr. Helstoski)

(Note: The analysis above only deals with title I of this bill)

92^d CONGRESS
1st SESSION

H. R. 5010

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1971

Mr. O'HARA introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To assure equal access for farmworkers to programs and procedures instituted for the protection of American working men and women, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Farm Workers' Bill of
4 Rights".

5 STATEMENT OF FINDINGS AND PURPOSE

6 SEC. 2. (a) The Congress finds that, although most
7 working men and women have had their working conditions
8 improved, their real wages increased, and their voice at the

1 bargaining table safeguarded by Federal and State labor leg-
2 islation during the course of the past half-century, one seg-
3 ment of the working force has been left almost wholly out-
4 side of this forward movement. The farmworker, either
5 because of explicit exclusion from the laws, or because of
6 separate treatment therein, has been effectively denied the
7 kind of protection, both substantive and procedural, that
8 other working men and women have come to consider as
9 their right.

10 (b) The Congress further finds and declares it to be
11 repugnant to the public policy of the United States that a
12 major segment of the working population has been effectively
13 excluded from the equal protection of the laws.

14 (c) The Congress, therefore, declares it to be the policy
15 of the United States and the purpose of this Act to assure
16 equal access for farmworkers to programs and procedures in-
17 stituted for the protection of working people, specifically in-
18 cluding workmen's compensation, wage and hour protection.
19 unemployment compensation, and free collective bargaining
20 power substantially equal to the power enjoyed by their
21 employers.

22 TITLE I—COLLECTIVE BARGAINING

23 SEC. 101. This title may be cited as "The Farm
24 Workers' Collective Bargaining Act".

1 SEC. 102. (a) Section 2 (3) of the National Labor
2 Relations Act is amended by striking the words "as an
3 agricultural laborer, or".

4 (b) Section 2 (5) of the National Labor Relations Act
5 is amended by striking the period at the end and adding
6 in lieu thereof "but for purposes of section 8 (b) (4) (A)
7 and (B) and section 8 (e) of this Act shall not include any
8 organization primarily representing agricultural workers."

9 SEC. 103. Section 8 (a) of the National Labor Rela-
10 tions Act is amended by striking the period at the end
11 thereof and inserting in lieu thereof a semicolon and by
12 adding the following new paragraph:

13 "(6) to employ in any workplace during the
14 existence of a strike or lockout at such workplace any
15 individual who is not domiciled in the United States,
16 unless such individual was so employed immediately
17 prior to the beginning of such strike or lockout."

18 SEC. 104. Section 8 (b) (7) of the National Relations
19 Act is amended by inserting after "employer" the first time
20 it appears the following: "(other than an employer en-
21 gaged in agriculture)".

22 SEC. 105. Section 8 of the National Labor Relations Act,
23 as amended, is further amended by adding at the end thereof
24 the following new subsection:

1 “(g) It shall not be an unfair labor practice under sub-
2 sections (a) and (b) of this section for an employer engaged
3 in agriculture to make an agreement covering employees
4 engaged (or who, upon their employment, will be engaged)
5 as agricultural laborers, with a labor organization of which
6 such employees are members (not established, maintained,
7 or assisted by any action defined in section 8 (a) of this Act
8 as an unfair labor practice) because (1) such agreement
9 requires as a condition of employment, membership in such
10 labor organization after the seventh day following the be-
11 ginning of such employment or the effective date of the
12 agreement, whichever is later, or (2) such agreement pro-
13 vides for priority in opportunities for employment based upon
14 length of service with such employer, in the industry or in
15 the particular geographical area: *Provided*, That nothing in
16 this subsection shall set aside the final proviso to section 8
17 (a) (3) of this Act.”

18 SEC. 106. Section 14 (b) of the National Labor Rela-
19 tions Act is amended by inserting before the period at the
20 end thereof the following: “: *Provided*, That this subsection
21 shall not be applicable with respect to employment in agri-
22 culture.”

23 SEC. 107. Notwithstanding the provisions of any other
24 law, the amendments made by this title shall take effect
25 sixty days after the date of enactment.

92^d CONGRESS
1st Session

H. R. 10445

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1971

Mr. SISK (for himself and Mr. McFALL) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the National Labor Relations Act, as amended, to amend the definition of "employee" to include certain agricultural employees.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 2 (3) of the National Labor Relations Act, as
- 4 amended, is amended by striking out the following phrase:
- 5 "as an agricultural laborer, or".

92D CONGRESS
1ST SESSION

H. R. 10459

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1971

Mr. VEYSEY introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To establish a Farm Labor Relations Board to prescribe and protect the collective-bargaining rights of agricultural employees and agricultural employers, so as to avoid disruptive labor disputes in agriculture.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled.*
3 That this Act may be cited as the "National Farm Labor
4 Relations Act".

FINDINGS AND POLICIES

6 SEC. 2. The Congress finds that farm employees should
7 have the right to decide by secret-ballot elections without
8 outside coercion and influence whether or not they wish to
9 organize and bargain collectively. The absence of legal guide-

1 lines and procedures in agricultural labor relations has per-
2 mitted civil strife and thus has interfered with the free flow
3 of commerce. This can be avoided or substantially minimized
4 if agricultural employers, agricultural employees and labor
5 organizations each recognize under law one another's legiti-
6 mate rights in their relations with the other and above all
7 recognize under law that neither party has a right in its
8 relations with any other to engage in acts or practices which
9 jeopardize the public health, safety and interest.

10 It is the purpose and policy of this Act in order to pro-
11 mote full flow of commerce, to provide a comprehensive
12 plan for the protection of agricultural employees and agricul-
13 tural employers in their relations affecting commerce, to
14 insure that agricultural employees may be free from inter-
15 ference from any person or organization in their relations
16 with labor organizations to protect the rights of agricultural
17 employers to operate and direct their enterprises and to pro-
18 tect the rights of the public to the free flow of agricultural
19 products.

20 DEFINITIONS

21 SEC. 3. When used in this Act—

22 (1) The term "person" includes one or more individ-
23 uals, labor organizations, partnerships, associations, corpora-
24 tions, legal representatives, trustees, trustees in bankruptcy,
25 or receivers.

1 (2) The term "employer" includes any person acting
2 as an agent of an employer, directly or indirectly, but shall
3 not include the United States, or any State or political sub-
4 division thereof,

5 (3) The term "agriculture" includes farming in all its
6 branches which is in commerce or which affects commerce
7 and, among other things, shall include the cultivation and
8 tillage of the soil; dairying; the production, cultivation,
9 growing, and harvesting of any agricultural or horticultural
10 commodity (including commodities defined as agricultural
11 commodities in section 15 (g) of the Agricultural Marketing
12 Act, as amended) ; the raising of livestock, bees, or poultry;
13 and any practices performed by a farmer or on a farm as an
14 incident to or in conjunction with farming operations.

15 (4) The term "agricultural employer" means any em-
16 ployer engaged in agriculture affecting commerce who,
17 during any calendar quarter during the preceding calendar
18 year, used more than five hundred man-days of agricultural
19 labor. Such term shall also include any person who provides
20 labor and services on one or more farms as an independent
21 contractor if such person, during any calendar quarter during
22 the preceding calendar year, provided more than five hun-
23 dred man-days of agricultural labor. In calculating the aver-
24 age number of agricultural employees employed by an agri-
25 cultural employer or provided by an independent contractor,

1 four hours or more of employment in any one day shall be
2 considered one man-day.

3 (5) The term "employee" shall include any employee,
4 and shall not be limited to the employees of a particular
5 employer, unless the Act explicitly states otherwise, and
6 shall include any individual whose work has ceased as a con-
7 sequence of, or in connection with, any current labor dispute
8 or because of any unfair labor practice, and who has not ob-
9 tained any other regular and substantially equivalent em-
10 ployment, but shall not include any individual employed by
11 his parent or spouse, or any individual having the status of
12 an independent contractor, or by any other person who is not
13 an employer as herein defined.

14 (6) The term "agricultural employee" means any em-
15 ployee who is employed in agriculture by a particular agri-
16 cultural employer and who has been so employed for at least
17 fifteen workdays during the preceding thirty calendar days.
18 If otherwise qualified, a person shall be considered an agri-
19 cultural employee if the employer pays the wages of the em-
20 ployee and the work is performed for the employer's benefit
21 or on his behalf, even though the supervision, bookkeeping,
22 and the issuance of payroll checks is by a person other than
23 the employer. In calculating a workday of an agricultural
24 employee, four hours or more of employment in any one day
25 shall be considered a workday.

1 (7) The term "representatives" includes any individual
2 or labor organization.

3 (8) The term "labor organization" means any organi-
4 zation of any kind, or any agency or employee representation
5 committee or plan, in which employees participate and which
6 exists for the purpose, in whole or in part, of dealing with
7 employers concerning grievances, labor disputes, wages, rates
8 or pay, hours of employment, or conditions or work.

9 (9) The term "commerce" means trade, traffic, com-
10 merce, transportation, or communication among the several
11 States, or between the District of Columbia or any territory
12 of the United States and any State or other territory, or
13 between any foreign country and any State, territory, or the
14 District of Columbia, or within any territory, or between
15 points in the same State but through any other State or any
16 territory or the District of Columbia or any foreign country.

17 (10) The term "affecting commerce" means in com-
18 merce, or burdening or obstructing commerce or the free flow
19 of commerce, or having led or tending to lead to a labor dis-
20 pute burdening or obstructing commerce or the free flow of
21 commerce.

22 (11) The term "unfair labor practice" means any unfair
23 labor practice listed in section 10.

24 (12) The term "labor dispute" includes any controversy
25 between an agricultural employer and his agricultural em-

1 ployees concerning terms, tenure or conditions of employ-
2 ment, or concerning the association or representation of per-
3 sons in negotiating, fixing, maintaining, changing, or seeking
4 to arrange terms or conditions of employment.

5 (13) The term "Farm Labor Relations Board" means
6 the Farm Labor Relations Board provided for in section 4
7 of this Act.

8 (14) The term "supervisor" means any individual hav-
9 ing authority, in the interest of the employer, to hire, trans-
10 fer, suspend, lay off, recall, promote, discharge, assign,
11 reward, or discipline other employees, or responsibly to
12 direct them, or to adjust their grievances, or effectively to
13 recommend such action, if in connection with the foregoing
14 the exercise of such authority is not of a merely routine or
15 clerical nature, but requires the use of independent judgment.

16 (15) The term "farm" means any enterprise engaged
17 in agriculture which is operated from one headquarters where
18 the utilization of labor and equipment is directed, and which,
19 if consisting of separate tracts of land, is within a fifty-mile
20 radius of the headquarters.

21 (16) In determining whether any person is acting as
22 an "agent" of another person so as to make such other person
23 responsible for his acts, the question of whether the specific
24 acts performed were actually authorized or subsequently rati-
25 fied shall not be controlling.

1 FARM LABOR RELATIONS BOARD

2 SEC. 4. (a) The Farm Labor Relations Board (herein-
3 after called the "board") shall consist of three members
4 appointed by the President by and with the advice and con-
5 sent of the Senate. The members of the Board shall be
6 appointed for terms of six years each, except that any indi-
7 vidual chosen to fill a vacancy shall be appointed only for
8 the unexpired term of the member whom he shall succeed,
9 and, of the members first appointed, one shall be appointed
10 for a term of two years, one for a term of four years, and
11 one for a term of six years, from the date of enactment of
12 this Act, as determined by the President at the time of
13 appointment. The members of the Board shall be chosen for
14 their knowledge of the problems relating to agriculture and
15 to agricultural labor relations. The President shall designate
16 one member to serve as Chairman of the Board. Any mem-
17 ber of the Board may be removed by the President, upon
18 notice and hearing, for neglect of duty or malfeasance in
19 office, but for no other cause.

20 (b) A vacancy in the Board shall not impair the right
21 of the remaining members to exercise all of the powers of
22 the Board, and two members of the Board shall, at all times,
23 constitute a quorum of the Board. The Board shall have an
24 official seal which shall be judicially noticed.

25 (c) The Board shall at the close of each fiscal year

1 make a report in writing to Congress and to the President
2 stating in detail the cases it has heard, the decisions it has
3 rendered, the names, salaries, and duties of all employees
4 and officers in the employ or under the supervision of the
5 Board, and an account of all moneys it has disbursed.

6 (d) There shall be a General Counsel of the Board who
7 shall be appointed by the President, by and with the advice
8 and consent of the Senate, for a term of four years. The Gen-
9 eral Counsel of the Board shall exercise general supervision
10 over all attorneys employed by the Board (other than trial
11 examiners and legal assistants to Board members) and over
12 the officers and employees in the regional offices. He shall
13 have final authority, on behalf of the Board, in respect of the
14 investigation of charges and issuance of complaints under
15 section 12, and in respect of the prosecution of such com-
16 plaints before the Board, and shall have such other duties
17 as the Board may prescribe or as may be provided by law.
18 In case of a vacancy in the office of the General Counsel the
19 President is authorized to designate the officer or employee
20 who shall act as General Counsel during such vacancy, but
21 no person or persons so designated shall so act (1) for more
22 than forty days when the Congress is in session unless a nom-
23 ination to fill such vacancy shall have been submitted to the
24 Senate, or (2) after the adjournment sine die of the ses-
25 sion of the Senate in which such nomination was submitted.

1 SEC. 5. Each member of the Board and the General
2 Counsel of the Board shall be eligible for reappointment, and
3 shall not engage in any other business, vocation, or employ-
4 ment. The Board shall appoint an executive secretary, and
5 such attorneys, examiners, and regional directors, and such
6 other employees as it may from time to time find necessary
7 for the proper performance of its duties. The Board may not
8 employ any attorneys for the purpose of reviewing transcripts
9 of hearings or preparing drafts of opinions except that any
10 attorney employed for assignment as a legal assistant to any
11 Board member may for such Board member review such
12 transcripts and prepare such drafts. No trial examiner's
13 report shall be reviewed, either before or after its publica-
14 tion, by any person other than a member of the Board or
15 his legal assistant, and no trial examiner shall advise or con-
16 sult with the Board with respect to exceptions taken to his
17 findings, ruling, or recommendations. The Board may estab-
18 lish or utilize such regional, local, or other agencies, and
19 utilize such voluntary and uncompensated services, as may
20 from time to time be needed. Attorneys appointed under this
21 section may, at the direction of the Board, appear for and
22 represent the Board in any case in court. Nothing in this Act
23 shall be construed to authorize the Board to appoint individ-
24 uals for the purpose of conciliation or mediation, or for eco-
25 nomic analysis.

1 SEC. 6. The principal office of the board shall be in the
2 District of Columbia, but it may meet and exercise any or
3 all of its powers at any other place. The Board may, by one
4 or more of its members or by such agents or agencies as it
5 designates, prosecute any inquiry necessary to its functions
6 in any part of the United States. A member who participates
7 in such an inquiry shall not be disqualified from subsequently
8 participating in a decision of the Board in the same case.

9 SEC. 7. The Board shall have authority from time to
10 time to make, amend, and rescind, in the manner prescribed
11 by the Administrative Procedure Act, such rules and regula-
12 tions as may be necessary to carry out the provisions of this
13 Act.

14 SEC. 8. (a) Section 5314 of title 5, United States Code,
15 is amended by adding at the end thereof the following:

16 “(56) Chairman, Farm Labor Relations Board.”

17 (b) Section 5315 of such title is amended by adding at
18 the end thereof the following:

19 “(94) Members, Farm Labor Relations Board.”

20 RIGHTS OF EMPLOYEES

21 SEC. 9. Agricultural employees shall have the right to
22 self-organization, to form, join, or assist labor organizations,
23 to bargain collectively through representatives of their own
24 choosing, and to engage in other concerted activities for the
25 purpose of collective bargaining or other mutual aid or pro-

1 tection, and shall also have the right to refrain from any or
2 all of such activities except to the extent that such right
3 may be affected by an agreement requiring membership in
4 a labor organization as a condition of employment as author-
5 ized in section 10 (a) (3).

6 UNFAIR LABOR PRACTICES

7 SEC. 10. (a) It shall be an unfair labor practice for an
8 agricultural employer—

9 (1) to interfere with, restrain, or coerce employees
10 in the exercise of the rights guaranteed in section 9;

11 (2) to dominate or interfere with the formation or
12 administration of any labor organization or contribute
13 financial or other support to it: *Provided*, That subject
14 to rules and regulations made and published by the
15 Board pursuant to section 7, an agricultural employer
16 may permit agricultural employees to confer with him
17 during working hours without loss of time or pay;

18 (3) by discrimination in regard to hire or tenure
19 of employment or any term or condition of employment
20 to encourage or discourage membership in any labor
21 organization by an agricultural employee: *Provided*,
22 That nothing in this Act, or in any other statute of the
23 United States, shall preclude an agricultural employer
24 from making an agreement with a labor organization
25 (not established, maintained, or assisted by any action

1 defined in section 10 (a) of this Act as an unfair labor
2 practice) to require as a condition of employment mem-
3 bership therein on or after the thirtieth day following
4 the beginning of such employment or the effective date of
5 such agreement, whichever is the later, (i) if such labor
6 organization is the representative of the employees as
7 provided in section 11 (a), in the appropriate collective-
8 bargaining unit covered by such agreement when made,
9 and (ii) unless following an election held as provided in
10 section 11 (e) within one year preceding the effective
11 date of such agreement, the Board shall have certified
12 that at least a majority of the employees eligible to vote
13 in such election have voted to rescind the authority
14 of such labor organization to make such an agreement:
15 *Provided further*, That no agricultural employer shall
16 justify any discrimination against an employee for non-
17 membership in a labor organization (A) if he has reason-
18 able grounds for believing that such membership was not
19 available to the employee on the same terms and condi-
20 tions generally applicable to other members, or (B) if
21 he has reasonable grounds for believing that membership
22 was denied or terminated for reasons other than the
23 failure of the employee to tender the periodic dues and
24 the initiation fees uniformly required as a condition of
25 acquiring or retaining membership;

1 (4) to discharge or otherwise discriminate against
2 an agricultural employee because he has filed charges
3 or given testimony under this Act;

4 (5) to refuse to bargain collectively with the rep-
5 resentatives of his employees, subject to the provisions
6 of section 11 (a) : *Provided*, That nothing in this Act
7 shall be construed as requiring an agricultural employer
8 to bargain collectively until a representative of his
9 employees has been determined by means of a valid
10 secret-ballot election conducted in accordance with the
11 provisions of section 11;

12 (6) to recognize or bargain with a labor organiza-
13 tion as a representative or potential representative of his
14 employees until such labor organization has been certi-
15 fied as a representative of such employees after a valid
16 secret-ballot election pursuant to this Act.

17 (b) It shall be unfair labor practice for a labor orga-
18 nization or its agents—

19 (1) to restrain or coerce or intimidate (A) any
20 agricultural employee in the exercise of the rights guar-
21 anteed in section 9, or his family, or any member thereof,
22 or picket the domicile or injure the person or property of
23 any agricultural employee or his family, or any member
24 thereof: *Provided*, That this paragraph shall not impair
25 the right of a labor organization to prescribe its own rules

1 with respect to the acquisition or retention of member-
2 ship therein: *Provided further*, That it shall be an unfair
3 labor practice for a labor organization to threaten or
4 impose any fine or other economic sanction against any
5 person in the exercise of rights under this Act (includ-
6 ing but not limited to invoking the processes of the
7 Board) or (B) an agricultural employer in the selec-
8 tion of his representatives for the purposes of collective
9 bargaining or the adjustment of grievances;

10 (2) to cause or tempt to cause an agricultural
11 employer to discriminate against an agricultural em-
12 ployee in violation of subsection (a) (3) or to discrimi-
13 nate against an agricultural employee with the respect
14 to whom membership in such organization has been
15 denied or terminated on some ground other than his
16 failure to tender the periodic dues and the initiation fees
17 uniformly required as a condition of acquiring or retain-
18 ing membership;

19 (3) to refuse to bargain collectively with an agri-
20 cultural employer, provided it is the representative of
21 his employees subject to the provisions of section 11 (a) ;

22 (4) (i) to engage in, or to induce or encourage any
23 individual employed by any person engaged in com-
24 merce or in an industry affecting commerce to engage
25 in, a strike or a refusal in the course of his employment

1 to use, manufacture, process, transport, or otherwise
2 handle or work on any goods, articles, materials, or
3 commodities or to perform any services; or (ii) to
4 threaten, coerce, or restrain any person engaged in com-
5 merce or in an industry affecting commerce, whether in
6 either case an object thereof if:

7 (A) forcing or requiring any agricultural em-
8 ployer or self-employed person to join any labor or
9 employer organization or to enter into any agree-
10 ment which is prohibited by section 10 (c) ;

11 (B) forcing or requiring any person to cease
12 using, selling, handling, transporting, or otherwise
13 dealing in the products of any other producer, proc-
14 essor, or manufacturer, or to cease doing business
15 with any other person, or forcing or requiring any
16 agricultural employer to recognize or bargain with
17 a labor organization as the representative of his em-
18 ployees unless such labor organization has been cer-
19 tified as the representative of such employees under
20 the provisions of section 11: *Provided*, That noth-
21 ing contained in this clause (B) shall be construed
22 to make unlawful, where not otherwise unlawful,
23 any primary strike or primary picketing;

24 (C) forcing or requiring any agricultural em-
25 ployer to recognize or bargain with a particular

1 labor organization as the representative of his agri-
2 cultural employees if another labor organization has
3 been certified as the representative of such em-
4 ployees under the provisions of section 11;

5 (D) forcing or requiring any agricultural em-
6 ployer to assign particular work to agricultural em-
7 ployees in a particular labor organization or in a
8 particular trade, craft, or class rather than to agri-
9 cultural employees in another labor organization or
10 in another trade, craft, or class, unless such employer
11 is failing to conform to an order or certification of
12 the Board determining the bargaining representa-
13 tive for employees performing such work:

14 *Provided*, That nothing contained in this subsection (b)
15 shall be construed to make unlawful a refusal by any
16 person to enter upon the premises of any employer
17 (other than his own employer), if the employees of
18 such employer are engaged in a strike ratified or ap-
19 proved by a representative of such employees whom
20 such employer is required to recognize under this Act:

21 *Provided further*, That for the purposes of this para-
22 graph (4) only, nothing contained in such paragraph
23 shall be construed to prohibit publicity, other than
24 picketing, for the purpose of truthfully advising the pub-
25 lic, including consumers and members of a labor orga-

1 nization, that a product or products are produced by
2 an agricultural employer with whom the labor orga-
3 nization has a primary dispute and are distributed by
4 another employer, as long as such publicity does not
5 have an effect of inducing any individual employed by
6 any person other than the primary employer in the
7 course of his employment to refuse to pick up, deliver,
8 or transport any goods, or not to perform any services,
9 at the establishment of the employer engaged in such
10 distribution;

11 (5) to require of agricultural employees covered by
12 an agreement authorized under subsection (a) (3) the
13 payment, as a condition precedent to becoming a mem-
14 ber of such organization or as a condition of reinstatement,
15 of a fee in an amount which the Board finds excessive or discriminatory. In making such a finding, the
16 Board shall consider, among other relevant factors, the
17 practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

21 (6) to cause or attempt to cause an agricultural
22 employer to pay or deliver or agree to pay or deliver
23 any money or other thing of value, in the nature of an
24 exaction, for services which are not performed or not
25 to be performed; and

1 (7) to picket or cause to be picketed, or threaten
2 to picket or cause to be picketed, any agricultural em-
3 ployer where an object thereof is forcing or requiring
4 an employer to recognize or bargain with a labor organi-
5 zation as the representative of his employees, or fore-
6 ing or requiring the agricultural employees of an em-
7 ployer to accept or select such labor organization as
8 their collective bargaining representative, unless such
9 labor organization is currently certified as the representa-
10 tive of such employees:

11 (A) where the agricultural employer has law-
12 fully recognized in accordance with this Act any
13 other labor organization and a question concerning
14 representation may not appropriately be raised under
15 section 11 (c) of this Act,

16 (B) where within the preceding twelve months
17 a valid election under section 11 (c) of this Act has
18 been conducted, or

19 (C) where such picketing has been conducted
20 without a petition under section 11 (c) of this Act
21 being filed. Nothing in this paragraph (7) shall be
22 construed to permit any act which would otherwise
23 be an unfair labor practice under this section 10 (b) .

24 (c) The expressing of any views, argument, opinion or
25 the making of any statement whether in written, printed,

1 graphic, visual, or auditory form, if such expression contains
2 no threat of reprisal or force or promise of benefit, shall not
3 constitute or be evidence of an unfair labor practice under
4 any of the provisions of this title.

5 (d) For the purposes of this section, to bargain collec-
6 tively is the performance of the mutual obligation of the agri-
7 cultural employer and the representative of the agricultural
8 employees to meet at reasonable times and confer in good
9 faith with respect to wages, hours, and other terms and
10 conditions of employment, or the negotiation of an agree-
11 ment, or any question arising thereunder, and the execution
12 of a written contract incorporating any agreement reached
13 if requested by either party, but such obligation does not
14 compel either party to agree to a proposal or require the
15 making of a concession: *Provided*, That where there is in
16 effect a collective-bargaining contract covering agricultural
17 employees, the duty to bargain collectively shall also mean
18 that no party to such contract shall terminate or modify such
19 contract, unless the party desiring such termination or
20 modification—

21 (1) serves a written notice upon the other party to
22 the contract of the proposed termination or modification
23 sixty days prior to the expiration date thereof, or in the
24 event such contract contains no expiration date, sixty

1 days prior to the time it is proposed to make such ter-
2 mination or modification;

3 (2) offers to meet and confer with the other party
4 for the purpose of negotiating a new contract or a
5 contract containing the proposed modifications;

6 (3) notifies the Federal Mediation and Conciliation
7 Service within thirty days after such notice of the exist-
8 ence of a dispute, and simultaneously therewith notifies
9 any State or territorial agency established to mediate
10 and conciliate disputes within the State or Territory
11 where the dispute occurred, provided no agreement has
12 been reached by that time; and

13 (4) continues in full force and effect, without
14 resorting to strike or lockout, all the terms and condi-
15 tions of the existing contract for a period of sixty days
16 after such notice is given or until the expiration date of
17 such contract, whichever occurs later;

18 The duties imposed upon agricultural employers, agricultural
19 employees, and labor organizations by paragraphs (2), (3),
20 and (4) shall become inapplicable upon an intervening certi-
21 fication of the Board, under which the labor organization or
22 individual, which is a party to the contract, has been super-
23 seded as or ceased to be the representative of the employees
24 subject to the provisions of section 11 (a), and the duties so
25 imposed shall not be construed as requiring either party to

1 discuss or agree to any modification of the terms and condi-
2 tions contained in a contract for a fixed period, if such modifi-
3 cation is to become effective before such terms and conditions
4 can be reopened under the provisions of the contract. Any
5 agricultural employee who engages in a strike within the
6 sixty-day period specified in this subsection shall lose his
7 status as an agricultural employee of the agricultural
8 employer engaged in the particular labor dispute, for the
9 purposes of sections 8, 9, and 10 of this Act, as amended, but
10 such loss of status for such agricultural employee shall termi-
11 nate if and when he is reemployed by such agricultural
12 employer or employed by another agricultural employer.

13 (e) It shall be an unfair labor practice for any labor
14 organization and any agricultural employer to enter into any
15 contract or agreement, express or implied, whereby such
16 agricultural employer ceases or refrains or agrees to cease or
17 refrain from handling, using, selling, transporting or other-
18 wise dealing in any of the products of any other employer, or
19 to cease doing business with any other person, and any con-
20 tract or agreement entered into heretofore or hereafter con-
21 taining such an agreement shall be to such extent unen-
22 forceable and void.

23 REPRESENTATIVES AND ELECTIONS

24 SEC. 11. (a) Representatives designated or selected for
25 the purposes of collective bargaining by the majority of the

1 agricultural employees in a unit appropriate for such pur-
2 poses, shall be the exclusive representatives of all the agri-
3 cultural employees in such unit for the purposes of collective
4 bargaining in respect to rates of pay, wages, hours of em-
5 ployment, or other conditions of employment: *Provided,*
6 That any individual agricultural employee or group of agri-
7 cultural employees shall have the right at any time to pre-
8 sent grievances to their employer and to have such
9 grievances adjusted, without the intervention of the bargain-
10 ing representative, as long as the adjustment is not incon-
11 sistent with the terms of a collective bargaining contract or
12 agreement then in effect: *Provided further,* That the bargain-
13 ing representative has been given opportunity to be present
14 at such adjustment.

15 (b) The Board shall decide in each case the unit appro-
16 priate for the purposes of collective bargaining, unless the
17 persons filing the petition under this section and the agri-
18 cultural employer involved agree that a different unit also is
19 an appropriate bargaining unit.

20 (c) (1) Wherever a petition shall have been filed, in
21 accordance with such regulations as may be prescribed by
22 the Board—

23 (A) by an agricultural employee or group of such
24 employees or any individual or labor organization act-
25 ing in their behalf alleging that a substantial number of

1 agricultural employees (i) wish to be represented for
2 collective bargaining and that their employer declines to
3 recognize their representative as the representative de-
4 fined in section 11 (a), or (ii) assert that the individual
5 or labor organization, which has been certified or is being
6 currently recognized*by their employer as the bargain-
7 ing representative, is no longer a representative as de-
8 fined in section 11 (a); or

9 (B) by an employer, alleging that one or more
10 individuals or labor organizations have presented to
11 him a claim to be recognized as the representative de-
12 fined in section 9 (a);

13 the Board shall investigate such petition and if it has reason-
14 able cause to believe that a question of representation affect-
15 ing commerce exists shall provide for an appropriate hearing
16 upon due notice. Such hearing may be conducted by an officer
17 or employee of the regional office, who shall not make any
18 recommendations with respect thereto. If the Board finds
19 upon the record of such hearing that such a question of rep-
20 resentation exists, it shall direct an election by secret ballot
21 and shall certify the results thereof.

22 (2) In determining whether or not a question of repre-
23 sentation affecting commerce exists, the same regulations and
24 rules of decision shall apply irrespective of the identity of the
25 persons filing the petition or the kind of relief sought and in

1 no case shall the Board deny a labor organization a place
2 on the ballot by reason of an order with respect to such labor
3 organization or its predecessor not issued in conformity with
4 section 12 (c).

5 (3) No election shall be directed in any bargaining unit
6 or any subdivision within which, in the preceding twelve-
7 month period, a valid election shall have been held. Agricul-
8 tural employees engaged in an economic strike who are not
9 entitled to reinstatement shall be eligible to vote under such
10 regulations as the Board shall find are consistent with the pur-
11 poses and provisions of this Act in any election conducted
12 within twelve months after the commencement of the strike.
13 In any election where none of the choices on the ballot re-
14 ceives a majority, a runoff shall be conducted, the ballot pro-
15 viding for a selection between the two choices receiving the
16 largest and second largest number of valid votes cast in the
17 election.

18 (4) Nothing in this section shall be construed to pro-
19 hibit the waiving of hearings by stipulation for the purpose
20 of a consent election in conformity with regulations and rules
21 of decision of the Board.

22 (5) In determining whether a unit is appropriate for the
23 purposes specified in subsection (b) the extent to which the
24 employees have organized shall not be controlling.

25 (d) Whenever an order of the Board made pursuant to

1 section 12 (c) is based in whole or in part upon facts certi-
2 fied following an investigation pursuant to subsection (c)
3 of this section and there is a petition for the enforcement or
4 review of such order, such certification and the record of
5 such investigation shall be included in the transcript of the
6 entire record required to be filed under section 12 (c) or (f),
7 and thereupon the decree of the court enforcing, modifying,
8 or setting aside in whole or in part the order of the Board
9 shall be made and entered upon the pleadings, testimony, and
10 proceedings set forth in such transcript.

11 (e) (1) Upon the filing with the Board, by 30 per
12 centum or more of the agricultural employees in a bargain-
13 ing unit covered by an agreement between their employer
14 and a labor organization made pursuant to section 10 (a) (3),
15 of a petition alleging they desire that such authority be
16 rescinded, the Board shall take a secret ballot of the em-
17 ployees in such unit and certify the results thereof to such
18 labor organization and to the employer.

19 (2) No election shall be conducted pursuant to this
20 subsection in any bargaining unit or any subdivision within
21 which, in the preceding twelve-month period, a valid elec-
22 tion shall have been held.

23 PREVENTION OF UNFAIR LABOR PRACTICES

24 SEC. 12. (a) The Board is empowered, as hereinafter
25 provided, to prevent any person from engaging in any unfair

1 labor practice (listed in section 10) affecting commerce. This
2 power shall not be affected by any other means of adjust-
3 ment or prevention that has been or may be established by
4 agreement, law, or otherwise.

5 (b) Whenever it is charged that any person has engaged
6 in or is engaging in any such unfair labor practice, the Board,
7 or any agent or agency designated by the Board for such pur-
8 poses, shall have power to issue and cause to be served upon
9 such person a complaint stating the charges in that respect,
10 and containing a notice of hearing before the Board or a
11 member thereof, or before a designated agent or agency, at
12 a place therein fixed, not less than five days after the serving
13 of said complaint: *Provided*, That no complaint shall issue
14 based upon any unfair labor practice occurring before the
15 date of enactment of this Act, or more than six months prior
16 to the filing of the charge with the Board and the service of
17 a copy thereof upon the person against whom such charge is
18 made, unless the person aggrieved thereby was prevented
19 from filing such charge by reason of service in the armed
20 forces, in which event the six-month period shall be computed
21 from the day of his discharge. Any such complaint may be
22 amended by the member, agent, or agency conducting the
23 hearing or the Board in its discretion at any time prior to the
24 issuance of an order based thereon. The person so complained
25 of shall have the right to file an answer to the original or

1 amended complaint and to appear in person or otherwise and
2 give testimony at the place and time fixed in the complaint.
3 In the discretion of the member, agent, or agency conducting
4 the hearing or the Board, any other person may be allowed
5 to intervene in the said proceedings and to present testimony.
6 Any such proceeding shall, so far as practicable, be conducted
7 in accordance with the rules of evidence applicable in the dis-
8 trict courts of the United States under the rules of civil pro-
9 cedure for the district courts of the United States, adopted by
10 the Supreme Court of the United States.

11 (c) The testimony taken by such member, agent, or
12 agency or the Board shall be reduced to writing and filed
13 with the Board. Thereafter, in its discretion, the Board upon
14 notice may take further testimony or hear argument. If
15 upon the preponderance of the testimony taken the Board
16 shall be of the opinion that any person named in the com-
17 plaint has engaged in or is engaging in any such unfair labor
18 practice, then the Board shall state its findings of fact and
19 shall issue and cause to be served on such person an order
20 requiring such person to cease and desist from such unfair
21 labor practice, and to take such affirmative action including
22 reinstatement of agricultural employees with or without back
23 pay, as will effectuate the policies of this Act: *Provided*, That
24 where an order directs reinstatement of an agricultural em-
25 ployee, back pay may be required of the employer or labor

1 organization, as the case may be, responsible for the dis-
2 crimination suffered by him: *And provided further*, That in
3 determining whether a complaint shall issue alleging a vio-
4 lation of section 10 (a) (1) of section 10 (a) (2), and in
5 deciding such cases, the same regulations and rules of deci-
6 sion shall apply irrespective of whether or not the labor or-
7 ganization affected is affiliated with a labor organization na-
8 tional or international in scope. Such order may further
9 require such person to make reports from time to time show-
10 ing the extent to which it has complied with the order. If
11 upon the preponderance of the testimony taken the Board
12 shall not be of the opinion that the person named in the com-
13 plaint has engaged in or is engaging in any such unfair labor
14 practice, then the Board shall state its findings of fact and
15 shall issue an order dismissing the said complaint. No or-
16 der of the Board shall require the reinstatement of any in-
17 dividual as an agricultural employee who has been suspended
18 or discharged, or the payment to him of any back pay, if
19 such individual was suspended or discharged for cause. In
20 case the evidence is presented before a member of the
21 Board, or before an examiner or examiners thereof, such
22 member, or such examiner or examiners, as the case may be,
23 shall issue and cause to be served on the parties to the pro-
24 ceeding a proposed report, together with a recommended
25 order, which shall be filed with the Board, and if no excep-

1 tions are filed within twenty days after service thereof upon
2 such parties, or within such further period as the Board
3 may authorize, such recommended order shall become the
4 order of the Board and become effective as therein prescribed.

5 (d) Until the record in a case shall have been filed in
6 a court, as hereinafter provided, the Board may at any time,
7 upon reasonable notice and in such manner as it shall deem
8 proper, modify or set aside, in whole or in part, any finding
9 or order made or issued by it.

10 (e) The Board shall have power to petition any court
11 of appeals of the United States, or if all the courts of appeals
12 to which application may be made are in vacation, any dis-
13 trict court of the United States, within any circuit or district,
14 respectively, wherein the unfair labor practice in question
15 occurred or wherein such person resides or transacts business,
16 for the enforcement of such order and for appropriate tempo-
17 rary relief or restraining order, and shall file in the court the
18 record in the proceedings, as provided in section 2112 of
19 title 28, United States Code. Upon the filing of such petition,
20 the court shall cause notice thereof to be served upon such
21 person, and thereupon shall have jurisdiction of the proceed-
22 ing and of the question determined therein, and shall have
23 power to grant such temporary relief or restraining order as
24 it deems just and proper, and to make and enter a decree
25 enforcing, modifying, and enforcing as so modified, or setting

1 aside in whole or in part the order of the Board. No objection
2 that has not been urged before the Board, its member, agent,
3 or agency, shall be considered by the court, unless the failure
4 or neglect to urge such objection shall be excused because of
5 extraordinary circumstances. The findings of the Board with
6 respect to questions of fact if supported by substantial evi-
7 dence on the record considered as a whole shall be conclu-
8 sive. If either party shall apply to the court for leave to
9 adduce additional evidence and shall show to the satisfaction
10 of the court that such additional evidence is material and that
11 there were reasonable grounds for the failure to adduce such
12 evidence in the hearing before the Board, its member, agent,
13 or agency, the court may order such additional evidence to
14 be taken before the Board, its member, agent, or agency,
15 and to be made a part of the record. The Board may modify
16 its findings as to the facts, or make new findings, by reason
17 of additional evidence so taken and filed, and it shall file such
18 modified or new findings, which findings with respect to
19 questions of fact if supported by substantial evidence on the
20 record considered as a whole shall be conclusive, and shall
21 file its recommendations, if any, for the modification or
22 setting aside of its original order. Upon the filing of the
23 record with it the jurisdiction of the court shall be exclusive
24 and its judgment and decree shall be final, except that the
25 same shall be subject to review by the appropriate United

1 States court of appeals if application was made to the district
2 court as hereinabove provided, and by the Supreme Court
3 of the United States upon writ of certiorari or certification
4 as provided in section 1254 of title 28.

5 (f) Any person aggrieved by a final order of the Board
6 granting or denying in whole or in part the relief sought may
7 obtain a review of such order in any circuit court of appeals
8 of the United States in the circuit wherein the unfair labor
9 practice in question was alleged to have been engaged in or
10 wherein such person resides or transacts business, by filing in
11 such court a written petition praying that the order of the
12 Board be modified or set aside. A copy of such petition shall
13 be forthwith transmitted by the clerk of the court to the
14 Board, and thereupon the aggrieved party shall file in the
15 court the record in the proceeding, certified by the Board, as
16 provided in section 2112 of title 28, United States Code.
17 Upon the filing of such petition, the court shall proceed in
18 the same manner as in the case of an application by the
19 Board under subsection (e) of this section, and shall have
20 the same jurisdiction to grant to the Board such temporary
21 relief or restraining order as it deems just and proper, and in
22 like manner to make and enter a decree enforcing, modifying,
23 and enforcing as so modified, or setting aside in whole or in
24 part the order of the Board; the findings of the Board with
25 respect to questions of fact if supported by substantial evi-

1 dence on the record considered as a whole shall in like manner
2 be conclusive.

3 (g) The commencement of proceedings under subsection
4 tion (e) or (f) of this section shall not, unless specifically
5 ordered by the court, operate as a stay of the Board's order.

6 (h) When granting appropriate temporary relief or a
7 restraining order, or making and entering a decree enforcing,
8 modifying, and enforcing as so modified, or setting aside in
9 whole or in part an order of the Board, as provided in this
10 section, the jurisdiction of courts sitting in equity shall not be
11 limited by the Act entitled "An Act to amend the Judicial
12 Code and to define and limit the jurisdiction of courts sitting
13 in equity, and for other purposes," approved March 23, 1932
14 (U.S.C., supp. VII, title 29, secs. 101-115).

15 (i) Petitions filed under this Act shall be heard expedi-
16 tiously, and if possible within ten days after they have been
17 docketed.

18 (j) The Board shall have power, upon issuance of a
19 complaint as provided in subsection (b) charging that any
20 person has engaged in or is engaging in an unfair labor prac-
21 tice, to petition any district court of the United States (in-
22 cluding the District Court of the United States for the Dis-
23 trict of Columbia), within any district wherein the unfair
24 labor practice in question is alleged to have occurred or
25 wherein such person resides or transacts business, for appro-

1 puate temporary relief or restraining order. Upon the filing
2 of any such petition the court shall cause notice thereof
3 to be served upon such person, and thereupon shall have
4 jurisdiction to grant to the Board such temporary relief or
5 restraining order as it deems just and proper.

6 (k) Whenever it is charged that any person has en-
7 gaged in an unfair labor practice within the meaning of para-
8 graph (4) (D) of section 10 (b), the Board is empowered
9 and directed to hear and determine the dispute out of which
10 such unfair labor practice shall have arisen, unless, within
11 ten days after notice that such charge has been filed, the
12 parties to such dispute submit to the Board satisfactory evi-
13 dence that they have adjusted, or agreed upon methods for
14 the voluntary adjustment of, the dispute. Upon compliance
15 by the parties to the dispute with the decision of the Board
16 or upon such voluntary adjustment of the dispute, such charge
17 shall be dismissed.

18 (l) Whenever it is charged that any person has engaged
19 in an unfair labor practice within the meaning of paragraph
20 (4) (A), (B), or (C) of section 10 (b), or section 10 (e)
21 or section 10 (b) (7), the preliminary investigation of such
22 charge shall be made forthwith and given priority over all
23 other cases except cases of like character in the office where
24 it is filed or to which it is referred. If, after such investigation,
25 the officer or regional attorney to whom the matter may be

1 referred has reasonable cause to believe such charge is true
2 and that a complaint should issue, he shall, on behalf of the
3 Board, petition any district court of the United States (in-
4 cluding the District Court of the United States for the Dis-
5 trict of Columbia) within any district where the unfair labor
6 practice in question has occurred, is alleged to have occurred,
7 or wherein such person resides or transacts business, for ap-
8 propriate injunctive relief pending the final adjudication of
9 the Board with respect to such matter. Upon the filing of
10 any such petition the district court shall have jurisdiction
11 to grant such injunctive relief or temporary restraining order
12 as it deems just and proper, notwithstanding any other pro-
13 vision of law: *Provided further*, That no temporary restrain-
14 ing order shall be issued without notice unless a petition
15 alleges that substantial and irreparable injury to the charg-
16 ing party will be unavoidable and such temporary restrain-
17 ing order shall be effective for no longer than five days and
18 will become void at the expiration of such period: *Provided*
19 *further*, That such officer or regional attorney shall not apply
20 for any restraining order under section 10 (b) (7) if a charge
21 against the employer under section 10 (a) (2) has been filed
22 and after the preliminary investigation, he has reasonable
23 cause to believe that such charge is true and that a complaint
24 should issue. Upon filing of any such petition the courts
25 shall cause notice thereof to be served upon any person in-

1 volved in the charge and such person, including the charging
2 party, shall be given an opportunity to appear by counsel and
3 present any relevant testimony: *Provided further*, That for
4 the purposes of this subsection district courts shall be deemed
5 to have jurisdiction of a labor organization (1) in the district
6 in which such organization maintains its principal office, or
7 (2) in any district in which its duly authorized officers or
8 agents are engaged in promoting or protecting the interests
9 of employee members. The service of legal process upon such
10 officer or agent shall constitute service upon the labor organi-
11 zation and make such organizations a party to the suit. In
12 situations where such relief is appropriate the procedure
13 specified herein shall apply to charges with respect to section
14 10 (b) (4) (D)..

15 (m) Whenever it is charged that any person has en-
16 gaged in an unfair labor practice within the meaning of sub-
17 section (a) (3) or (b) (2) of section 10, such charge shall
18 be given priority over all other cases except cases of like
19 character in the office where it is filed or to which it is re-
20 ferred and cases given priority under subsection (l).

21 (n) Whenever it is charged that any person has en-
22 gaged in an unfair labor practice involving an agricultural
23 employee or an agricultural employer, the charging party
24 may, after having filed his charge with the Board, petition, in
25 the name of the Board, in any district court of the United

1 States (including the District Court of the United States for
2 the District of Columbia) within any district where the unfair
3 labor practice in question has occurred, is alleged to have
4 occurred, or wherein such person resides or transacts busi-
5 ness, for an appropriate temporary restraining order. Upon
6 the filing of such a petition, alleging that irreparable injury
7 to the charging party will be unavoidable, the district court
8 shall have jurisdiction to grant such temporary restraining
9 order as it deems just and proper without notice and not-
10 withstanding any other provisions of law. Such a temporary
11 restraining order shall be effective for no longer than ten days
12 and will become void at the expiration of such period. No
13 extension of such temporary restraining order may be granted
14 except upon application by the Board as provided below.
15 Immediately upon the filing of such charge, the Board's
16 preliminary investigation shall be made forthwith and given
17 priority over all other cases except cases of like character in
18 the office where it is filed or to which it is referred. If, after
19 such investigation, the officer or regional attorney to whom
20 the matter may be referred has reasonable cause to believe
21 such charge is true and that a complaint should issue, he shall,
22 on behalf of the Board, within a period not to exceed ten
23 days from the date of filing of the charge, enter the pending
24 district court action upon the petition filed above or upon an
25 amended petition. Upon entry of the Board and its applica-

tion therefore, the district court shall have jurisdiction to grant such injunctive relief as it deems just and proper, notwithstanding any other provision of law. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit.

INVESTIGATORY POWERS

SEC. 13. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 11 and section 12—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that re-

1 lates to any matter under investigation or in question. The
2 Board, or any member thereof, shall upon application of any
3 party to such proceedings, forthwith issue to such party
4 subpenas requiring the attendance and testimony of wit-
5 nesses or the production of any evidence in such proceeding
6 or investigation requested in such application. Within five
7 days after the service of a subpoena on any person requiring
8 the production of any evidence in his possession or under his
9 control, such person may petition the Board to revoke, and
10 the Board shall revoke, such subpoena if in its opinion the
11 evidence whose production is required does not relate to any
12 matter under investigation, or any matter in question in
13 such proceedings, or if in its opinion the evidence whose
14 production is required does not relate to any matter under
15 investigation, or any matter in question in such proceedings,
16 or if in its opinion such subpoena does not describe with suf-
17 ficient particularity the evidence whose production is re-
18 quired. Any member of the Board, or any agent or agency
19 designated by the Board for such purposes, may administer
20 oaths and affirmations, examine witnesses, and receive evi-
21 dence. Such attendance of witnesses and the production of
22 such evidence may be required from any place in the United
23 States or any Territory or possession thereof, at any desig-
24 nated place of hearing.

25 (2) In case of contumacy or refusal to obey a subpoena

1 issued to any person, any district court of the United States
2 or the United States courts of any territory or possession, or
3 the District Court of the United States for the District of
4 Columbia, within the jurisdiction of which the inquiry is
5 carried on or within the jurisdiction of which said person
6 guilty of contumacy or refusal to obey is found or resides
7 or transacts business, upon application by the Board shall
8 have jurisdiction to issue to such person an order requiring
9 such person to appear before the Board, its member, agent,
10 or agency, there to produce evidence if so ordered, or there
11 to give testimony touching the matter under investigation
12 or in question; and any failure to obey such order of the
13 court may be punished by said court as a contempt thereof.

14 (3) Complaints, orders, and other process and papers
15 of the Board, its member, agent, or agency, may be served
16 either personally or by registered mail or by telegraph or by
17 leaving a copy thereof at the principal office or place of
18 business of the person required to be served. The verified re-
19 turn by the individual so serving the same, setting forth the
20 manner of such service shall be proof of the same, and the
21 return post office receipt or telegraph receipt therefor when
22 registered and mailed or telegraphed as aforesaid shall be
23 proof of service of the same. Witnesses summoned before
24 the Board, its member, agent, or agency, shall be paid the
25 same fees and mileage that are paid witnesses in the courts

1 of the United States, and witnesses whose depositions are
2 taken and the persons taking the same shall severally be en-
3 titled to the same fees as are paid for like services in the
4 courts of the United States.

5 (4) All process of any court to which application may
6 be made under this Act may be served in the judicial district
7 wherein the defendant or other person required to be served
8 resides or may be found.

9 (5) The several departments and agencies of the Gov-
10 ernment, when directed by the President, shall furnish the
11 Board, upon its request, all records, papers, and information
12 in their possession relating to any matter before the Board.

13 SEC. 14. Any person who shall willfully resist, prevent,
14 impede, or interfere with any member of the Board or any
15 of its agents or agencies in the performance of duties pur-
16 suant to this Act shall be punished by a fine of not more than
17 \$5,000 or by imprisonment for not more than one year, or
18 both.

19 CONCILIATION

20 SEC. 15. The Federal Mediation and Conciliation
21 Service (hereinafter referred to as the "Service") estab-
22 lished pursuant to title II of the Labor Management Rela-
23 tions Act, 1967 (29 U.S.C. 171), shall furnish assistance
24 to parties in labor disputes involving agricultural employers

1 and employees and their representatives, including the serv-
2 ices of mediators familiar with agricultural operations.

3 SEC. 16. In order to prevent or minimize interruptions
4 of the free flow of commerce growing out of labor disputes,
5 agricultural employers and employees and their representa-
6 tives shall—

7 (1) exert every reasonable effort to make and
8 maintain agreements concerning rates of pay, hours, and
9 working conditions, including provision for adequate
10 notice of any proposed change in the terms of such
11 agreements;

12 (2) whenever a dispute arises over the terms or
13 application of a collective-bargaining agreement and a
14 conference is requested by a party or prospective party
15 thereto, arrange promptly for such a conference to be
16 held and endeavor in such conference to be held and
17 endeavor in such dispute expeditiously; and

18 (3) in case such dispute is not settled by confer-
19 ence, participate fully and promptly in such meetings as
20 may be undertaken by the Service for the purpose of
21 aiding in a settlement of the dispute.

22 DELAY IN EFFECTUATING STRIKE OR LOCK-OUT DECISIONS

23 SEC. 17. (a) (1) At any time after certification of a
24 labor organization as the representative of an agricultural

1 employer's agricultural employees and prior to execution
2 of a valid collective-bargaining agreement by the agricul-
3 tural employer and the labor organization; or

4 (2) At any time after a party to a collective-bargain-
5 ing contract has received a notice under section 10 (d) (1) ;
6 the Board, upon application of one party, shall order the
7 parties to refrain from making any changes, except by agree-
8 ment, in the terms and conditions of employment for the
9 period requested in the application, but in no event longer
10 than thirty days. During such period the parties shall be
11 subject to the duty to refrain from a strike or a lockout; to
12 continue to bargain collectively (as described in the portion
13 of section 10 (d) preceding the proviso) ; and to participate
14 fully and promptly in such meetings as may be undertaken
15 by the Service for purpose of aiding in the settlement of the
16 dispute as required by section 16 (3) .

17 (b) Whenever the Board has reason to believe any
18 party to a contract has violated its order issued under sub-
19 section (a) , it shall bring a civil action in the United States
20 district court for the district where the violation occurred, or
21 where the principal office of the defendant is situated. The
22 United States district courts shall have jurisdiction in actions
23 brought under this section to grant such relief as they deem
24 appropriate, including the issuance of temporary injunctions
25 and restraining orders.

LIMITATIONS

1
2 SEC. 18. Nothing in this Act, except as specifically pro-
3 vided for herein, shall be construed so as either to interfere
4 with or impede or diminish in any way the right to strike,
5 or to affect the limitations or qualifications on that right.

6 SEC. 19. (a) Nothing herein shall prohibit any indi-
7 vidual employed as a supervisor from becoming or remaining
8 a member of a labor organization, but no agricultural em-
9 ployer subject to this Act shall be compelled to deem in-
10 dividuals defined herein as supervisors as employees for the
11 purpose of any law, either national or local, relating to
12 collective bargaining.

13 (b) Nothing in this Act shall be construed as authoriz-
14 ing the execution or application of agreements requiring
15 membership in a labor organization as a condition of em-
16 ployment in any State or territory in which such execution
17 or application is prohibited by State or Territorial law.

18 SEC. 20. Wherever the application of the provisions of
19 section 272 of chapter 10 of the Act entitled "An Act to es-
20 tablish a uniform system of bankruptcy throughout the United
21 States," approved July 1, 1898, and Acts amendatory
22 thereof and supplementary thereto (11 U.S.C. 672), con-
23 flicts with the application of the provisions of this Act, this
24 Act shall prevail: *Provided*, That in any situation where the

1 provisions of this Act cannot be validly enforced, the provi-
2 sions of such other Acts shall remain in full force and effect.

3 SEC. 21. If any provision of this Act, or the applica-
4 tion of such provision to any person or circumstances, shall
5 be held invalid, the remainder of this Act, or the application
6 of such provision to persons or circumstances other than those
7 as to which it is held invalid, shall not be affected thereby.

92^D CONGRESS
2^D SESSION

H. R. 13981

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1972

Mr. LEGGETT (for himself, Mr. QUIE, Mr. ULLMAN, and Mr. TEAGUE of California) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide for the establishment of an Agricultural Labor Relations Board for the purpose of regulating the agricultural industry and agricultural labor, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE AND DECLARATION OF POLICY

4 SECTION 1. (a) This Act may be cited as the "Agri-
5 cultural Labor Relations Act of 1972".

6 (b) Experience has demonstrated that the lack of or-
7 derly procedures for securing collective bargaining rights has
8 contributed to certain practices in the agriculture industry,
9 including secondary boycotts and work disruptions during
10 critical periods, which promote strife and pose a threat to

1 the public interest and the free flow of commerce. Recogniz-
2 ing the unique nature of the agriculture industry, including
3 the public dependence upon its vital products, it is necessary
4 to establish special provisions so that the right to organize
5 and bargain collectively may be assured to agricultural em-
6 ployees without undue injury to the public interest.

7 It is further recognized that agricultural employers
8 should be protected from certain practices engaged in by
9 some labor organizations, their officers, and members which
10 burden or obstruct commerce thereby preventing the free
11 flow of agricultural products.

12 It is hereby declared to be the policy of the United
13 States to eliminate the causes of certain substantial obstruc-
14 tions to the free flow of commerce by encouraging farmers
15 and agricultural employees represented by labor organiza-
16 tions to resolve labor disputes through collective bargaining
17 and to protect the exercise by agricultural workers of full
18 freedom of association, self-organization, and designation of
19 representatives of their own choosing for the purposes of
20 negotiating the terms and conditions of their employment
21 or other mutual aid or protection.

22 DEFINITIONS

23 SEC. 2. When used in this Act—

24 (1) The term "person" includes one or more individ-
25 uals, labor organization, partnerships, associations, corpora-

1 tions, legal representatives, trustees, trustees in bankruptcy,
2 or receivers.

3 (2) The term "employee" shall mean an employee
4 employed in agriculture.

5 (3) The term "employer" shall mean an employer
6 engaged in agriculture who employed more than five hun-
7 dred man-days of agricultural labor during any calendar
8 quarter of the preceding calendar year.

9 (4) The term "agriculture" includes farming in all its
10 branches and among other things includes the cultivation
11 and tillage of the soil, dairying, the production, cultivation,
12 growing, and harvesting of commodities defined as agricul-
13 tural commodities in section 15 (g) of the Agricultural
14 Marketing Act, as amended, the raising of livestock, bees,
15 fur-bearing animals, or poultry, and any practices (includ-
16 ing any forestry or lumbering operations) performed by a
17 farmer or on a farm as an incident to or in conjunction with
18 such farming operations, including preparation for market,
19 delivery to storage or to market or to carriers for transpor-
20 tation to market.

21 (5) The term "Agricultural Labor Relations Board"
22 means the Agricultural Labor Relations Board provided for
23 in section 3 of this Act.

24 (6) The term "representative" includes any individual

1 or labor organization representing exclusively or in part, agri-
2 cultural employees as defined herein.

3 (7) The term "labor organization" means any organiza-
4 tion of any kind, or any agency or employee representation
5 committee or plan, in which employees participate and which
6 exists for the purpose, in whole or in part, of dealing with
7 agricultural employers concerning grievances, labor disputes,
8 wages, rates of pay, hours of employment, or conditions of
9 work.

10 (8) The term "commerce" means trade, traffic, com-
11 merce, transportation, or communication among the several
12 States, or between the District of Columbia or any territory of
13 the United States and any State or other territory, or be-
14 tween any foreign country and any State, territory, or the
15 District of Columbia, or within the District of Columbia or
16 any territory, or between points in the same State but
17 through any other State or any territory or the District of
18 Columbia or any foreign country.

19 (9) The term "affecting commerce" means in com-
20 merce, or burdening or obstructing commerce or the free
21 flow of commerce, or having led or tending to lead to a labor
22 dispute burdening or obstructing commerce or the free flow
23 of commerce.

24 (10) The term "unfair labor practice" means any unfair
25 labor practice listed in section 8.

1 (11) The term "labor dispute" includes any controversy
2 concerning terms, tenure, or conditions of agricultural em-
3 ployment, or concerning the association or representation of
4 persons in negotiating, fixing, maintaining, changing, or
5 seeking to arrange terms or conditions of employment, regard-
6 less of whether the disputants stand in the proximate relation
7 of employer and employee.

8 (12) The term "supervisor" means any individual hav-
9 ing authority, in the interest of the employer, to hire, trans-
10 fer, suspend, layoff, recall, promote, discharge, assign, re-
11 ward, or discipline other employees, or responsibly to direct
12 them, or to adjust their grievances, or effectively to recom-
13 mend such action, if in connection with the foregoing the
14 exercise of such authority is not of a merely routine or cleri-
15 cal nature, but requires the use of independent judgment.

16 (13) The term "professional employee" means—

17 (a) any employee engaged in work (i) predomi-
18 nantly intellectual and varied in character as opposed to
19 routine mental, manual, mechanical, or physical work;
20 (ii) involving the consistent exercise of discretion and
21 judgment in its performance; (iii) of such a character
22 that the output produced or the result accomplished can-
23 not be standardized in relation to a given period of time;
24 (iv) requiring knowledge of an advanced type in a field
25 of science or learning customarily acquired by a pro-

1 longed course of specialized intellectual instruction and
2 study in an institution of higher learning or a hospital,
3 as distinguished from a general academic education or
4 from an apprenticeship or from training in the perform-
5 ance of routine mental, manual, or physical processes;
6 or

7 (b) any employee, who (i) has completed the
8 courses of specialized intellectual instruction and study
9 described in clause (iv) of paragraph (a), and (ii) is
10 performing related work under the supervision of a pro-
11 fessional person to qualify himself to become a profes-
12 sional employee as defined in paragraph (a).

13 (14) In determining whether any person is acting as an
14 “agent” of another person so as to make such other per-
15 son responsible for his acts, the question of whether the spe-
16 cific acts performed were actually authorized or subsequently
17 ratified shall not be controlling.

18 AGRICULTURE LABOR RELATIONS BOARD

19 SEC. 3. (a) The Agriculture Labor Relations Board
20 (hereinafter called the Board or the ALRB) created by
21 this Act shall consist of three members appointed by the
22 President by and with the advice and consent of the Sen-
23 ate. Of the three appointed members, one shall be appointed
24 for a term of five years and the remaining two members
25 for terms of three and one year respectively. Their suc-

1 cessors shall be appointed for terms of five years each, ex-
2 cepting that any individual chosen to fill a vacancy shall
3 be appointed only for the unexpired term of the member
4 whom he shall succeed. The President shall designate one
5 member to serve as Chairman of the Board. Any mem-
6 ber of the Board may be removed by the President, upon
7 notice and hearing, for neglect of duty or malfeasance in
8 office, but for no other cause. Two members of the Board
9 shall constitute a quorum.

10 (b) The Board is authorized to determine the unit
11 appropriate for the purpose of collective bargaining. The
12 Board or its agents are also authorized to investigate and
13 provide for hearings, determine whether a question of rep-
14 resentation exists, and to direct an election or take a secret
15 ballot under section 9 and certify the results thereof. The
16 decisions and certifications of the Board under section 9 of
17 this Act shall be subject to review in the appropriate United
18 States court of appeals. In such case the record of such rep-
19 resentative proceeding shall be filed in the court of appeals
20 and thereupon the decision of such court shall be made
21 upon the pleadings, testimony, and proceedings set forth
22 in such record. Unless a specific stay of action is granted
23 either by the Board or the court, a petition for review of the
24 Board's decision or certification shall not operate as a stay
25 of decision or certification by the Board.

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

7 (d) There shall be a General Counsel of the Board who
8 shall be appointed by the President, by and with the advice
9 and consent of the Senate, for a term of four years. The Gen-
10 eral Counsel of the Board shall exercise general supervision
11 over all attorneys employed by the Board (other than trial
12 examiners and legal assistants to Board members) and over
13 the officers and employees in the regional offices. He shall
14 have final authority, on behalf of the Board, in respect of the
15 investigation of charges and issuance of complaints under
16 section 10, and in respect of the prosecution of such com-
17 plaints before the Board, and shall have such other duties
18 as the Board may prescribe or as may be provided by law.
19 In case of a vacancy in the office of the General Counsel
20 the President is authorized to designate the officer or em-
21 ployee who shall act as General Counsel during such vacancy,
22 but no person or persons so designated shall so act (1) for
23 more than forty days when the Congress is in session unless
24 a nomination to fill such vacancy shall have been submitted
25 to the Senate, or (2) after the adjournment sine die of the

1 session of the Senate in which such nomination was sub-
2 mitted.

3 SEC. 4. (a) Each member of the Board and the Gen-
4 eral Counsel shall receive a salary of \$38,000 a year, ex-
5 cept the Chairman of the Board who shall receive \$40,000,
6 shall be eligible for reappointment, and shall not engage in
7 any other business, vocation, or employment. The Board
8 shall appoint an executive secretary, and such attorneys,
9 examiners, and such other employees as it may from time to
10 time find necessary for the proper performance of its duties.
11 The Board may not employ any attorneys for the purpose of
12 reviewing transcripts of hearings or preparing drafts of
13 opinions except that any attorney employed for assignment
14 as a legal assistant to any Board member may for such
15 Board member review such transcripts and prepare such
16 drafts. No trial examiner's report shall be reviewed, either
17 before or after its publication, by any person other than a
18 member of the Board or his legal assistant, and no trial ex-
19 aminer shall advise or consult with the Board with respect
20 to exceptions taken to his findings, rulings, or recommenda-
21 tions. The Board may establish or utilize such regional, local,
22 or other agencies, and utilize such voluntary and uncompen-
23 sated services, as may from time to time be needed. At-
24 torneys appointed under this section may, at the direction

1 of the Board, appear for and represent the Board in any
2 case in court. Nothing in this Act shall be construed to au-
3 thorize the Board to appoint individuals for the purpose of
4 conciliation or mediation, or for economic analysis.

5 (b) All of the expenses of the Board, including all nec-
6 essary traveling and subsistence expenses outside the District
7 of Columbia incurred by the members or employees of the
8 Board under its orders, shall be allowed and paid on the
9 presentation of itemized vouchers therefor approved by the
10 Board or by any individual it designates for that purpose.

11 SEC. 5. (a) The principal office of the Board shall be
12 in the District of Columbia, but it may meet and exercise
13 any or all of its powers at any other place. The Board may
14 by one or more of its members or by such agents or agen-
15 cies as it may designate, prosecute any inquiry necessary to
16 its functions in any part of the United States. A member
17 who participates in such an inquiry shall not be disquali-
18 fied from subsequently participating in a decision of the
19 Board in the same case.

20 (b) Attorneys, examiners, and such other employees
21 as the Board determines are necessary shall be located in
22 various regional offices of the United States and wherever
23 feasible, shall utilize on a reimbursable basis, the regional
24 offices of the National Labor Relations Board in the per-
25 formance of any duties involving the application of this Act.

1 SEC. 6. (a) The Board shall have authority from time
2 to time to make, amend, and rescind, in the manner pre-
3 scribed by the Administrative Procedure Act, such rules and
4 regulations as may be necessary to carry out the provisions
5 of this Act: *Provided*, That within one hundred and eighty
6 days of the effective date of this Act, the Board shall pub-
7 lish in the Federal Register a general notice of proposed
8 rulemaking with regard to the standards, criteria, or policy
9 to be applied in cases involving section 9 of the Act, includ-
10 ing but not limited to the issues of the unit appropriate for
11 purposes of collective bargaining, the eligibility of em-
12 ployees to vote in elections, and the circumstances under
13 which a question of representation exists. Such a proposed
14 rulemaking shall be governed by section 553 of title 5,
15 United States Code.

16 (b) The Board shall have exclusive jurisdiction, au-
17 thority, and responsibility with respect to agricultural em-
18 ployees, agricultural employers, and labor organizations rep-
19 resenting or seeking to represent agricultural employees
20 covered by this Act.

21 In the event a question arises as to whether this Board
22 or the National Labor Relations Board has jurisdiction over
23 a particular labor dispute, the General Counsel of this Board
24 shall consult with the General Counsel of the National Labor
25 Relations Board on such matter and shall thereafter make a

12 RIGHTS OF EMPLOYEES

23 UNFAIR LABOR PRACTICES

24 SEC. 8. (a) It shall be an unfair labor practice for an
25 employer—

1 (1) to interfere with, restrain, or coerce employees
2 in the exercise of the rights guaranteed in section 7;

3 (2) to dominate or interfere with the formation or
4 administration of any labor organization or contribute
5 financial or other support to it: *Provided*, That subject
6 to rules and regulations made and published by the
7 Board pursuant to section 6, an employer shall not be
8 prohibited from permitting employees to confer with
9 him during working hours without loss of time or pay;

10 (3) by discrimination in regard to hire or tenure
11 of employment or any term or condition of employment
12 to encourage or discourage membership in any labor
13 organization: *Provided*, That nothing in this Act, or in
14 any other statute of the United States, shall preclude an
15 employer from making an agreement with a labor or-
16 ganization (not established, maintained, or assisted by
17 any action defined in section 8 (a) of the Act as an
18 unfair labor practice) to require as a condition of em-
19 ployment membership therein on or after the seventh
20 day following the beginning of such employment or the
21 effective date of such agreement, whichever is the later,
22 (i) if such labor organization is the representative of
23 the employees as provided in section 9 (a), in the ap-
24 propriate collective-bargaining unit covered by such
25 agreement when made, and (ii) unless following an

14

1 election held as provided in section 9 (e) within one
2 year preceding the effective date of such agreement, the
3 Board shall have certified that at least a majority of the
4 employees eligible to vote in such election have voted
5 to rescind the authority of such labor organization to
6 make such an agreement: *Provided further*, That no
7 employer shall justify any discrimination against an em-
8 ployee for nonmembership in a labor organization (A)
9 if he has reasonable grounds for believing that such
10 membership was not available to the employee on the
11 same terms and conditions generally applicable to other
12 members, or (B) if he has reasonable grounds for be-
13 lieving that membership was denied or terminated for
14 reasons other than the failure of the employee to tender
15 the periodic dues and the initiation fees uniformly re-
16 quired as a condition of acquiring or retaining mem-
17 bership;

18 (4) to discharge or otherwise discriminate against
19 an employee because he has filed charges or given testi-
20 mony under this Act;

21 (5) to refuse to bargain collectively with the rep-
22 resentatives of his employees, subject to the provisions
23 of section 9 (a) ;

24 (6) to lock out employees in violation of the re-
25 quirements of section 13 ;

1 (7) to knowingly employ as an employee any alien
2 who is in the United States in violation of law.

3 (b) It shall be an unfair labor practice for a labor
4 organization or its agents—

5 (1) to restrain or coerce (A) employees in the ex-
6 ercise of the rights guaranteed in section 7: *Provided*,
7 That this paragraph shall not impair the right of a
8 labor organization to prescribe its own rules with re-
9 spect to the acquisition or retention of membership
10 therein; or (B) an employer in the selection of his
11 representatives for the purposes of collective bargain-
12 ing or the adjustment of grievances;

13 (2) to cause or attempt to cause an employer to
14 discriminate against an employee in violation of sub-
15 section (a) (3) or to discriminate against an employee
16 with respect to whom membership in such organization
17 has been denied or terminated on some ground other
18 than his failure to tender the periodic dues and the ini-
19 tiation fees uniformly required as a condition of acquir-
20 ing or retaining membership;

21 (3) to refuse to bargain collectively with an em-
22 ployer, provided it is the representative of his employees
23 subject to the provisions of section 9 (a) ;

24 (4) (i) to engage in, or to induce or encourage any
25 individual employed by any person engaged in com-

1 merce or in an industry affecting commerce to engage
2 in, a strike or a refusal in the course of his employment
3 to use, manufacture, process, transport, or otherwise
4 handle or work on any goods, articles, materials, or com-
5 modities or to perform any services; or (ii) to threaten,
6 coerce, or restrain any person engaged in commerce or
7 in an industry affecting commerce, where in either case
8 an object thereof is:

9 (A) forcing or requiring any employer or self-
10 employed person to join any labor or employer or-
11 ganization or to enter into any agreement which is
12 prohibited by section 8 (e) ;

13 (B) forcing or requiring any person to cease
14 using, selling, handling, transporting, or otherwise
15 dealing in the products of any other producer, proc-
16 essor, or manufacturer, or to cease doing business
17 with any other person, or forcing or requiring any
18 other employer to recognize or bargain with a labor
19 organization as the representative of his employees
20 unless such labor organization has been certified as
21 the representative of such employees under the pro-
22 visions of section 9: *Provided*, That nothing con-
23 tained in this clause (B) shall be construed to make
24 unlawful where not otherwise unlawful, any primary
25 strike or primary picketing;

1 (C) forcing or requiring any employer to rec-
2 ognize or bargain with a particular labor organiza-
3 tion as the representative of his employees if another
4 labor organization has been certified as the repre-
5 sentative of such employees under the provisions of
6 section 9;

7 (D) forcing or requiring any employer to as-
8 sign particular work to employees in a particular
9 labor organization or in a particular trade, craft, or
10 class rather than to employees in another labor or-
11 ganization or in another trade, craft, or class, unless
12 such employer is failing to conform to an order or
13 certification of the Board determining the bargaining
14 representative for employees performing such work:

15 *Provided*, That nothing contained in this subsection (b)
16 shall be construed to make unlawful a refusal by any
17 person to enter upon the premises of any employer
18 (other than his own employer), if the employees of such
19 employer are engaged in a strike ratified or approved
20 by a representative of such employees whom such em-
21 ployer is required to recognize under this Act: *Provided*
22 *further*, That for the purposes of this paragraph (4)
23 only, nothing contained in such paragraph shall be con-
24 strued to prohibit publicity, other than picketing, for

1 the purpose of truthfully advising the public, including
2 consumers and members of a labor organization, that a
3 product or products are produced by an employer with
4 whom the labor organization has a primary dispute
5 and are distributed by another employer, as long as
6 such publicity does not have an effect of inducing any
7 individual employed by any person other than the
8 primary employer in the course of his employment to
9 refuse to pick up, deliver, or transport any goods, or not
10 to perform any services, at the establishment of the em-
11 ployer engaged in such distribution;

12 (5) to require of employees covered by an agree-
13 ment authorized under subsection (a) (3) the payment,
14 as a condition precedent to becoming a member of such
15 organization, of a fee in an amount which the Board
16 finds excessive or discriminatory under all the circum-
17 stances. In making such a finding, the Board shall con-
18 sider, among other relevant factors, the practices and
19 customs of labor organizations in the particular industry,
20 and the wages currently paid to the employees affected;

21 (6) to cause or attempt to cause an employer to
22 pay or deliver or agree to pay or deliver any money or
23 other thing of value, in the nature of an exaction, for
24 services which are not performed or not to be per-
25 formed;

1 (7) to picket or cause to be picketed, or threaten
2 to picket or cause to be picketed, any employer where
3 an object thereof is forcing or requiring an employer to
4 recognize or bargain with a labor organization as the
5 representative of his employees, or forcing or requiring
6 the employees of an employer to accept or select such
7 labor organization as their collective-bargaining repre-
8 sentative, unless such labor organization is currently
9 certified as the representative of such employees:

10 (A) where the employer has lawfully recog-
11 nized in accordance with this Act any other labor
12 organization and a question concerning representa-
13 tion may not appropriately be raised under section
14 9 (c) of this Act,

15 (B) where within the preceding twelve
16 months a valid election under section 9 (c) of this
17 Act has been conducted.

18 Nothing in paragraph (7) shall be construed to pro-
19 hibit any picketing or other publicity for the purpose
20 of truthfully advising the public (including consumers)
21 that an employer does not employ members of, or have
22 a contract with, a labor organization, unless an effect of
23 such picketing is to induce any individual employed by
24 any other person in the course of his employment, not
25 to pick up, deliver or transport any goods or not to

1 perform any services, or permit any act which would
2 otherwise be an unfair labor practice under subsection
3 (b) ; and

4 (8) to engage in any strike or picketing in viola-
5 tion of section 13 (b) : *Provided*, That nothing herein
6 shall be construed to make lawful any strike or activity
7 which is made unlawful by any other provision of this
8 Act.

9 (c) The expressing of any views, argument, or opinion,
10 or the dissemination thereof, whether in written, printed,
11 graphic, or visual form, shall not constitute or be evidence
12 of an unfair labor practice under any of the provisions of
13 this Act, if such expression contains no threat of reprisal
14 or force or promise of benefit.

15 (d) For the purposes of this section, to bargain collec-
16 tively is the performance of the mutual obligation of the
17 employer and the representative of the employees to meet
18 at reasonable times and confer in good faith with respect to
19 wages, hours, and other terms and conditions of employment,
20 or the negotiation of an agreement, or any question arising
21 thereunder, and the execution of a written contract incor-
22 porating any agreement reached if requested by either party,
23 but such obligation does not compel either party to agree
24 to a proposal or require the making of a concession: *Pro-*
25 *vided*, That where there is in effect a collective-bargaining

1 contract covering employees in an industry affecting com-
2 merce, the duty to bargain collectively shall also mean that
3 no party to such contract shall terminate or modify such
4 contract, unless the party desiring such termination or
5 modification—

6 (1) serves a written notice upon the other party
7 to the contract of the proposed termination or modi-
8 fication sixty days prior to the expiration date thereof,
9 or in the event such contract contains no expiration
10 date, sixty days prior to the time it is proposed to make
11 such termination or modification;

12 (2) offers to meet and confer with the other party
13 for the purpose of negotiating a new contract or a con-
14 tract containing the proposed modification;

15 The duties imposed upon employers, employees, and labor
16 organizations by paragraphs (1) and (2), above and sec-
17 tion 13 (b) shall become inapplicable upon an intervening
18 certification of the Board, under which the labor organiza-
19 tion or individual, which is a party to the contract, has
20 been superseded as or ceased to be the representative of
21 the employees subject to the provisions of section 9 (a),
22 and the duties so imposed shall not be construed as re-
23 quiring either party to discuss or agree to any modifica-
24 tion of the terms and conditions contained in a contract
25 for a fixed period, if such modification is to become effec-

1 tive before such terms and conditions can be reopened under
2 the provisions of the contract. Any employee who engages
3 in a strike in violation of this subsection (d) or section
4 13 (b) shall lose his status as an employee of the employer
5 engaged in the particular labor dispute, for the purposes
6 of sections 8, 9, and 10 of this Act, as amended, but such
7 loss of status for such employee shall terminate if and when
8 he is reemployed by such employer.

9 (e) It shall be an unfair labor practice for any labor
10 organization and any employer to enter into any contract
11 or agreement, express or implied, whereby such employer
12 ceases or refrains or agrees to cease or refrain from han-
13 dling, using, selling, transporting, or otherwise dealing in
14 any of the products of any other employer, or to cease
15 doing business with any other person, and any contract or
16 agreement entered into heretofore or hereafter containing
17 such an agreement shall be to such extent unenforceable
18 and void.

19 (f) It shall not be an unfair labor practice, under sub-
20 section (a) and (b) of this section for an employer to make
21 an agreement covering employees (or individuals who upon
22 employment will be employees) with a labor organization of
23 which employees are members (not established, maintained,
24 or assisted by any action defined in section 8 (a) of this Act
25 as an unfair labor practice) because such agreement requires

1 the employer to notify such labor organization of opportuni-
2 ties for employment with such employer, or gives such labor
3 organization an opportunity to refer qualified applicants for
4 such employer, so long as such agreement conforms to rules,
5 to be promulgated by the Board, which insure nonexclusive
6 and nonpreferential use of the arrangement and which may
7 provide for the maintenance of records and for reporting of
8 the operation of such arrangement to the Board: *Provided*,
9 That nothing in this subsection shall set aside the final proviso
10 to section 8 (a) (3) of this Act.

11 SEC. 9 (a) (1) Representatives designated or selected
12 for the purposes of collective bargaining by the majority
13 of the employees in a unit appropriate for such purposes,
14 shall be the exclusive representatives of all the employees
15 in such unit for the purposes of collective bargaining in re-
16 spect to rates of pay, wages, hours of employment, or other
17 conditions of employment: *Provided*, That any individual
18 employee or a group of employees shall have the right at
19 any time to present grievances to their employer and to
20 have such grievances adjusted, without the intervention of
21 the bargaining representative, as long as the adjustment is
22 not inconsistent with the terms of a collective bargaining
23 contract or agreement then in effect: *Provided further*, That
24 the bargaining representative has been given opportunity to
25 be present at such adjustment. (2) An employer shall be

1 required to recognize and bargain with a bargaining repre-
2 sentative when that representative has been selected, in a
3 secret ballot election, by a majority of the employees in an
4 appropriate unit pursuant to subsection (c) of this section:
5 *Provided*, That the Board may order an employer to bargain
6 with a labor organization, after a secret ballot election has
7 been completed resulting in a vote against representation
8 by that labor organization, but only where it determines that
9 (A) prior to the date upon which the election was held,
10 a majority of the employer's employees had clearly and freely
11 designated such labor organization as its representative; and
12 (B) pursuant to proceedings under section 10, the employer
13 has committed aggravated violations of section 8; and (C)
14 such aggravated section 8 violations directly resulted in the
15 defeat of the labor organization in the secret ballot election;
16 and (D) the effect of such section 8 violations is so ex-
17 traordinarily serious that such effect will continue, notwith-
18 standing any other remedy ordered by the Board, to the
19 extent that a fair election could not possibly be conducted
20 within a reasonable period of time.

21 (b) The Board shall decide in each case whether, in
22 order to assure to employees the fullest freedom in exercis-
23 ing the rights guaranteed by this Act, the unit, appropriate
24 for the purposes of collective bargaining shall be the employer
25 unit, craft unit, establishment unit, or subdivision thereof:

1 *Provided*, That the Board shall not (1) decide that any unit
2 is appropriate for such purposes if such unit includes both
3 professional employees and employees who are not pro-
4 fessional employees unless a majority of such professional
5 employees vote for inclusion in such unit; or (2) decide
6 that any craft unit is inappropriate for such purposes on the
7 ground that a different unit has been established by a prior
8 Board determination, unless a majority of the employees in
9 the proposed craft unit vote against separate representation;
10 or (3) decide that any unit is appropriate for such purposes
11 if it includes, together with other employees, any individual
12 employed as a guard to enforce against employees and other
13 persons rules to protect property of the employer or to pro-
14 tect the safety of persons on the employer's premises; but no
15 labor organization shall be certified as the representative of
16 employees in a bargaining unit of guards if such organization
17 admits to membership, or is affiliated directly or indirectly
18 with an organization which admits to membership, employees
19 other than guards.

20 (c) (1) Wherever a petition shall have been filed, in
21 accordance with such regulations as may be prescribed by
22 the Board—

23 (A) by an employee or group of employees or any
24 individual or labor organization acting in their behalf
25 alleging that a substantial number of employees (i)

1 wish to be represented for collective bargaining and that
2 their employer declines to recognize their representative
3 as the representative defined in section 9 (a), or (ii)
4 assert that the individual or labor organization, which
5 has been certified or is being currently recognized by
6 their employer as the bargaining representative, is no
7 longer a representative as defined in section 9 (a) ; or

8 (B) by an employer, alleging that one or more in-
9 dividuals or labor organizations have presented to him
10 a claim to be recognized as the representative defined in
11 section 9 (a) ;

12 the Board shall investigate such petition and if it has reason-
13 able cause to believe that a question of representation affect-
14 ing commerce exists shall provide for an appropriate hearing
15 upon due notice. Such hearing may be conducted by an
16 officer or employee of the regional office, who shall not
17 make any recommendations with respect thereto. If the
18 Board finds upon the record of such hearing that such a
19 question of representation exists, it shall direct an election
20 by secret ballot and shall certify the results thereof.

21 (2) In determining whether or not a question of rep-
22 resentation affecting commerce exists, the same regulations
23 and rules of decision shall apply irrespective of the identity
24 of the persons filing the petition or the kind of relief sought
25 and in no case shall the Board deny a labor organization a

1 place on the ballot by reason of an order with respect to
2 such labor organization or its predecessor not issued in con-
3 formity with section 10 (c) .

4 (3) No election shall be directed in any bargaining unit
5 or any subdivision within which, in the preceding twelve-
6 month period, a valid election shall have been held. Em-
7 ployees engaged in an economic strike who are not entitled
8 to reinstatement shall be eligible to vote under such regula-
9 tions as the Board shall find are consistent with the purposes
10 and provisions of this Act in any election conducted within
11 twelve months after the commencement of the strike. In any
12 election where none of the choices on the ballot receives a
13 majority, a runoff shall be conducted, the ballot providing
14 for a selection between the two choices receiving the largest
15 and second largest number of valid votes cast in the election.

16 (4) Nothing in this section shall be construed to prohibit
17 the waiving of hearings by stipulation for the purpose of a
18 consent election in conformity with regulations and rules of
19 decision of the Board.

20 (5) In determining whether a unit is appropriate for the
21 purposes specified in subsection (b) the extent to which the
22 employees have organized shall not be controlling.

23 (d) Whenever an order of the Board made pursuant
24 to section 10 (c) is based in whole or in part upon facts
25 certified following an investigation pursuant to subsection

1 (e) of this section and there is a petition for the enforcement
2 or review of such order, such certification and the record
3 of such investigation shall be included in the transcript of
4 the entire record required to be filed under section 10 (e) or
5 10 (f), and thereupon the decree of the court enforcing,
6 modifying, or setting aside in whole or in part the order of
7 the Board shall be made and entered upon the pleadings,
8 testimony, and proceedings set forth in such transcript.

9 (e) (1) Upon the filing with the Board, by 30 per
10 centum or more of the employees in a bargaining unit cov-
11 ered by an agreement between their employer and a labor
12 organization made pursuant to section 8 (a) (3), of a peti-
13 tion alleging they desire that such authority be rescinded,
14 the Board shall take a secret ballot of the employees in such
15 unit and certify the results thereof to such labor organiza-
16 tion and to the employer.

17 (2) No election shall be conducted pursuant to this
18 subsection in any bargaining unit or any subdivision within
19 which, in the preceding twelve-month period, a valid elec-
20 tion shall have been held.

21 PREVENTION OF UNFAIR LABOR PRACTICES

22 SEC. 10. (a) The Board is empowered, as hereinafter
23 provided, to prevent any person from engaging in any un-
24 fair labor practice (listed in section 8) affecting commerce.
25 This power shall not be affected by any other means of

1 adjustment or prevention that has been or may be established
2 by agreement, law, or otherwise: *Provided*, That the Board
3 is empowered by agreement with any agency of any State
4 or territory to cede to such agency jurisdiction over any
5 cases predominantly local in character even though such
6 cases may involve labor disputes affecting commerce, unless
7 the provision of the State or territorial statute applicable
8 to the determination of such cases by such agency is incon-
9 sistent with the corresponding provision of this Act or has
10 received a construction inconsistent therewith.

11 (b) Whenever it is charged that any person has engaged
12 in or is engaging in any such unfair labor practice, the Board,
13 or any agent or agency designated by the Board for such pur-
14 poses, shall have power to issue and cause to be served upon
15 such person a complaint stating the charges in that respect,
16 and containing a notice of hearing before the Board or a mem-
17 ber thereof, or before a designated agent or agency, at a place
18 therein fixed, not less than five days after the serving of said
19 complaint: *Provided*, That no complaint shall issue based
20 upon any unfair labor practice occurring more than six months
21 prior to the filing of the charge with the Board and the serv-
22 ice of a copy thereof upon the person against whom such
23 charge is made, unless the person aggrieved thereby was
24 prevented from filing such charge by reason of service in the
25 Armed Forces, in which event the six-month period shall be

1 computed from the day of his discharge. Any such complaint
2 may be amended by the member, agent, or agency conducting
3 the hearing or the Board in its discretion at any time prior to
4 the issuance of an order based thereon. The person so com-
5 plained of shall have the right to file an answer to the original
6 or amended complaint and to appear in person or otherwise
7 and give testimony at the place and time fixed in the com-
8 plaint. In the discretion of the member, agent, or agency con-
9 ducting the hearing or the Board, any other person may be
10 allowed to intervene in the said proceeding and to present
11 testimony. Any such proceeding shall, so far as practicable,
12 be conducted in accordance with the rules of evidence appli-
13 cable in the district courts of the United States under the
14 rules of civil procedure for the district courts of the United
15 States, adopted by the Supreme Court of the United States
16 pursuant to the Act of June 19, 1934 (28 U.S.C. 723-B.
17 723-C).

18 (c) The testimony taken by such member, agent, or
19 agency or the Board shall be reduced to writing and filed with
20 the Board. Thereafter, in its discretion, the Board upon notice
21 may take further testimony or hear argument. If upon the
22 preponderance of the testimony taken the Board shall be of
23 the opinion that any person named in the complaint has
24 engaged in or is engaging in any such unfair labor practice,
25 then the Board shall state its findings of fact and shall issue

1 and cause to be served on such person an order requiring
2 such person to cease and desist from such unfair labor prac-
3 tice, and to take such affirmative action including reinstate-
4 ment of employees with or without backpay, as will effectu-
5 ate the policies of this Act: *Provided*, That where an order
6 directs reinstatement of an employee, backpay may be re-
7 quired of the employer or labor organization, as the case may
8 be, responsible for the discrimination suffered by him: *And*
9 *provided further*, That in determining whether a complaint
10 shall issue alleging a violation of section 8 (a) (1) or section
11 8 (a) (2), and in deciding such cases the same regulations
12 and rules of decision shall apply irrespective of whether or
13 not the labor organization affected is affiliated with a labor
14 organization national or international in scope. Such order
15 may further require such person to make reports from time to
16 time showing the extent to which it has complied with the
17 order. If upon the preponderance of the testimony taken the
18 Board shall not be of the opinion that the person named in
19 the complaint has engaged in or is engaging in any such
20 unfair labor practice, then the Board shall state its findings
21 of fact and shall issue an order dismissing the said complaint.
22 No order of the Board shall require the reinstatement of any
23 individual as an employee who has been suspended or dis-
24 charged, or the payment to him of any backpay, if such in-
25 dividual was suspended or discharged for cause. In case the

1 evidence is presented before a member of the Board, or before
2 an examiner or examiners thereof, such member, or such
3 examiner or examiners, as the case may be, shall issue and
4 cause to be served on the parties to the proceeding a pro-
5 posed report, together with a recommended order, which shall
6 be filed with the Board, and if no exceptions are filed within
7 twenty days after service thereof upon such parties, or within
8 such further period as the Board may authorize, such rec-
9 ommended order shall become the order of the Board and be-
10 come effective as therein prescribed.

11 (d) Until the record in a case shall have been filed in a
12 court, as hereinafter provided, the Board may at any time,
13 upon reasonable notice and in such manner as it shall deem
14 proper, modify or set aside, in whole or in part, any finding
15 or order made or issued by it.

16 (e) The Board shall have power to petition any court
17 of appeals of the United States, or if all the courts of
18 appeals to which application may be made are in vacation,
19 any district court of the United States, within any circuit
20 or district, respectively, wherein the unfair labor practice
21 in question occurred or wherein such person resides or trans-
22 acts business, for the enforcement of such order and for
23 appropriate temporary relief or restraining order, and shall
24 file in the court the record in the proceedings, as provided in
25 section 2112 of title 28, United States Code. Upon the filing

1 of such petition, the court shall cause notice thereof to be
2 served upon such person, and thereupon shall have juris-
3 diction of the proceeding and of the question determined
4 therein, and shall have power to grant such temporary relief
5 or restraining order as it deems just and proper, and to make
6 and enter a decree enforcing, modifying, and enforcing as
7 so modified, or setting aside in whole or in part the order
8 of the Board. No objection that has not been urged before
9 the Board, its member, agent, or agency, shall be consid-
10 ered by the court, unless the failure or neglect to urge such
11 objection shall be excused because of extraordinary circum-
12 stances. The findings of the Board with respect to questions
13 of fact if supported by substantial evidence on the record
14 considered as a whole shall be conclusive. If either party
15 shall apply to the court for leave to adduce additional evi-
16 dence and shall show to the satisfaction of the court that
17 such additional evidence is material and that there were
18 reasonable grounds for the failure to adduce such evidence
19 in the hearing before the Board, its member, agent, or
20 agency, the court may order such additional evidence to be
21 taken before the Board, its member, agent, or agency, and
22 to be made a part of the record. The Board may modify its
23 findings as to the facts, or make new findings, by reason of
24 additional evidence so taken and filed, and it shall file such
25 modified or new findings, which findings with respect to

1 questions of fact if supported by substantial evidence on the
2 record considered as a whole shall be conclusive, and shall
3 file its recommendations, if any, for the modification or set-
4 ting aside of its original order. Upon the filing of the record
5 with it, the jurisdiction of the court shall be exclusive and
6 its judgment and decree shall be final, except that the same
7 shall be subject to review by the appropriate United States
8 court of appeals if application was made to the district
9 court as hereinabove provided, and by the Supreme Court
10 of the United States upon writ of certiorari or certification
11 as provide in section 1254 of title 28.

12 (f) Any person aggrieved by a final order of the Board
13 granting or denying in whole or in part the relief sought may
14 obtain a review of such order in any circuit court of appeals
15 of the United States in the circuit wherein the unfair labor
16 practice in question was alleged to have been engaged in
17 or wherein such person resides or transacts business, or in
18 the United States Court of Appeals for the District of Co-
19 lumbia, by filing in such court a written petition praying
20 that the order of the Board be modified or set aside. A copy
21 of such petition shall be forthwith transmitted by the clerk
22 of the court to the Board, and thereupon the aggrieved party
23 shall file in the court the record in the proceeding, certified
24 by the Board, as provided in section 2112 of title 28, United
25 States Code. Upon the filing of such petition, the court shall

1 proceed in the same manner as in the case of an application
2 by the Board under subsection (e) of this section, and shall
3 have the same jurisdiction to grant to the Board such tem-
4 porary relief or restraining order as it deems just and proper,
5 and in like manner to make and enter a decree enforcing,
6 modifying, and enforcing as so modified, or setting aside in
7 whole or in part the order of the Board; the findings of the
8 Board with respect to questions of fact if supported by sub-
9 stantial evidence on the record considered as a whole shall
10 in like manner be conclusive.

11 (g) The commencement of proceedings under subsec-
12 tion (e) or (f) of this section shall not, unless specifically
13 ordered by the court, operate as a stay of the Board's order.

14 (h) When granting appropriate temporary relief or a
15 restraining order, or making and entering a decree enforce-
16 ing, modifying, and enforcing as so modified, or setting
17 aside in whole or in part an order of the Board, as pro-
18 vided in this section, the jurisdiction of courts sitting in
19 equity shall not be limited by the Act entitled "An Act
20 to amend the Judicial Code and to define and limit the
21 jurisdiction of courts sitting in equity, and for other pur-
22 poses," approved March 23, 1932 (Supp. VII, 29 U.S.C.
23 101-115).

24 (i) Petitions filed under this Act shall be heard ex-

1 peditiously, and if possible within ten days after they have
2 been docketed.

3 (j) The Board shall have power, upon issuance of a
4 complaint as provided in subsection (b) charging that
5 any person has engaged in or is engaging in an unfair
6 labor practice, to petition any district court of the United
7 States (including the District Court of the United States
8 for the District of Columbia), within any district wherein
9 the unfair labor practice in question is alleged to have
10 occurred or wherein such person resides or transacts busi-
11 ness, for appropriate temporary relief or restraining order.
12 Upon the filing of any such petition the court shall cause
13 notice thereof to be served upon such person, and there-
14 upon shall have jurisdiction to grant to the Board such
15 temporary relief or restraining order as it deems just and
16 proper.

17 (k) Whenever it is charged that any person has en-
18 gaged in an unfair labor practice within the meaning of
19 paragraph (4) (D) of section 8(b), the Board is em-
20 powered and directed to hear and determine the dispute
21 out of which such unfair labor practice shall have arisen,
22 unless, within ten days after notice that such charge has
23 been filed, the parties to such dispute submit to the Board
24 satisfactory evidence that they have adjusted, or agreed
25 upon methods for the voluntary adjustment of, the dispute.

1 Upon compliance by the parties to the dispute with the
2 decision of the Board or upon such voluntary adjustment
3 of the dispute, such charge shall be dismissed.

4 (1) (1) Whenever it is charged that any person has
5 engaged in an unfair labor practice within the meaning of
6 section 8 (a) (6) or paragraph (4) (A), (B), or (C) of
7 section 8 (b), or section 8 (e), or section 8 (b) (7), or sec-
8 tion 8 (b) (8), the preliminary investigation of such charge
9 shall be made forthwith and given priority over all other
10 cases except cases of like character in the office where it is
11 referred. If, after such investigation, the officer or regional
12 attorney to whom the matter may be referred has reasonable
13 cause to believe such charge is true and that a complaint
14 should issue, he shall, on behalf of the Board, petition any
15 United States district court within any district where the
16 unfair labor practice in question has occurred, is alleged to
17 have occurred, or wherein such person resides or transacts
18 business, for appropriate injunctive relief pending the final
19 adjudication of the Board with respect to such matter. Upon
20 the filing of any such petition, the district court shall have
21 jurisdiction to grant such injunctive relief or temporary re-
22 straining order as it deems just and proper, notwithstanding
23 any other provision of law: *Provided*, That no temporary
24 restraining order shall be issued without notice unless a peti-
25 tion alleges that substantial and irreparable injury to the

1 charging party will be unavoidable and such temporary
2 restraining order shall be effective for no longer than five
3 days and will become void at the expiration of such period:
4 *Provided further*, That such officer or regional attorney shall
5 not apply for any restraining order under section 8 (b) (7)
6 if a charge against the employer under section 8 (a) (2)
7 has been filed and after the preliminary investigation, he has
8 reasonable cause to believe that such charge is true and that
9 a complaint should issue. Upon filing of such petition the
10 court shall cause notice thereof to be served upon any person
11 involved in the charge and such person, including the charg-
12 ing party, shall be given an opportunity to appear by counsel
13 and present any relevant testimony: *Provided further*, That
14 for the purposes of this subsection district courts shall be
15 deemed to have jurisdiction of a labor organization (1) in
16 the district in which such organization maintains its principal
17 office, or (2) in any district in which its duly authorized
18 officers or agents are engaged in promoting or protecting
19 the interests of employee members. The service of legal
20 process upon such officer or agent shall constitute service
21 upon the labor organization and make such organization a
22 party to the suit. In situations where such relief is appropri-
23 ate, the procedure specified herein shall apply to charges with
24 respect to section 8 (b) (4) (D).

25 (2) Whenever it is charged that any person has en-

1 gaged in an unfair labor practice involving an employee
2 or an employer within the meaning of section 8 (a) (6),
3 8 (a) (7), 8 (b) (4), 8 (b) (7), 8 (b) (8), or 8 (e), the
4 charging party may, after having filed his charge with the
5 Board, petition, in the name of the Board, in any district
6 court of the United States (including the District Court of
7 the United States for the District of Columbia) within any
8 district where the unfair labor practice in question has
9 occurred, is alleged to have occurred, or wherein such per-
10 son resides or transacts business, for an appropriate tempo-
11 rary restraining order. Upon the filing of such a petition,
12 alleging that irreparable injury to the charging party will
13 be unavoidable, the district court shall have jurisdiction to
14 grant such temporary restraining order as it deems just and
15 proper without notice and notwithstanding any other pro-
16 visions of law. Such a temporary restraining order shall be
17 effective for no longer than ten days and will become void
18 at the expiration of such period. No extension of such tem-
19 porary restraining order may be granted except upon appli-
20 cation by the Board as provided below. Immediately upon
21 the filing of such charge, the Board's preliminary investi-
22 gation shall be made forthwith and given priority over all
23 other cases except cases of like character in the office where
24 it is filed or to which it is referred. If, after such investiga-
25 tion, the officer or regional attorney to whom the matter

1 may be referred has reasonable cause to believe such charge
2 is true and that a complaint should issue, he shall, on behalf
3 of the Board, within a period not to exceed ten days from
4 the date of filing of the charge, enter the pending district
5 court action upon the petition filed above or upon an
6 amended petition. Upon entry of the Board and its applica-
7 tion therefor, the district court shall have jurisdiction to
8 grant such injunctive relief as it deems just and proper,
9 notwithstanding any other provision of law. Upon filing of
10 any such petition the courts shall cause notice thereof to
11 be served upon any person involved in the charge and such
12 person, including the charging party, shall be given an op-
13 portunity to appear by counsel and present any relevant
14 testimony: *Provided*, That for the purposes of this subsec-
15 tion district courts shall be deemed to have jurisdiction of a
16 labor organization (A) in the district in which such organi-
17 zation maintains its principal office, or (B) in any district in
18 which its duly authorized officers or agents are engaged in
19 promoting or protecting the interests of employee members.
20 The service of legal process upon such officer or agent shall
21 constitute service upon the labor organization and make
22 such organization a party to the suit.

23 (m) Whenever it is charged that any person has en-
24 gaged in an unfair labor practice within the meaning of sub-
25 section (a) (3) or (b) (2) of section 8, such charge shall

1 be given priority over all other cases except cases of like
2 character in the office where it is filed or to which it is
3 referred and cases given priority under subsection (1).

4 INVESTIGATORY POWERS

5 SEC. 11. For the purpose of all hearings and investiga-
6 tions, which, in the opinion of the Board, are necessary and
7 proper for the exercise of the powers vested in it by section
8 9 and section 10—

9 (1) The Board, or its duly authorized agents or agen-
10 cies, shall at all reasonable times have access to, for the pur-
11 pose of examination, and the right to copy any evidence of
12 any person being investigated or proceeded against that re-
13 lates to any matter under investigation or in question. The
14 Board, or any member thereof, shall upon application of any
15 party to such proceedings, forthwith issue to such party sub-
16 penas requiring the attendance and testimony of witnesses
17 or the production of any evidence in such proceeding or in-
18 vestigation requested in such application. Within five days
19 after the service of a subpoena on any person requiring the
20 production of any evidence in his possession or under his
21 control, such person may petition the Board to revoke, and
22 the Board shall revoke, such subpoena if in its opinion the
23 evidence whose production is required does not relate to any
24 matter under investigation, or any matter in question in such
25 proceedings, or if in its opinion such subpoena does not de-

1 scribe with sufficient particularity the evidence whose pro-
2 duction is required. Any member of the Board, or any agent
3 or agency designated by the Board for such purposes, may
4 administer oaths and affirmations, examine witnesses, and
5 receive evidence. Such attendance of witnesses and the pro-
6 duction of such evidence may be required from any place
7 in the United States or any territory or possession thereof,
8 at any designated place of hearing.

9 (2) In case of contumacy or refusal to obey a subpoena
10 issued to any person, any district court of the United States
11 or the United States courts of any territory or possession,
12 or the District Court of the United States for the District of
13 Columbia, within the jurisdiction of which the inquiry is
14 carried on or within the jurisdiction of which said person
15 guilty of contumacy or refusal to obey is found or resides or
16 transacts business, upon application by the Board shall have
17 jurisdiction to issue to such person an order requiring such
18 person to appear before the Board, its member, agent, or
19 agency, there to produce evidence if so ordered, or there to
20 give testimony touching the matter under investigation or
21 in question; and any failure to obey such order of the court
22 may be punished by said court as a contempt thereof.

23 (3) No person shall be excused from attending and
24 testifying or from producing books, records, correspondence,
25 documents, or other evidence in obedience to the subpoena

1 of the Board, on the ground that the testimony or evidence
2 required of him may tend to incriminate him or subject him
3 to a penalty or forfeiture; but no individual shall be prose-
4 cuted or subjected to any penalty or forfeiture for or on ac-
5 count of any transaction, matter, or thing concerning which
6 he is compelled, after having claimed his privilege against
7 self-incrimination, to testify or produce evidence, except
8 that such individual so testifying shall not be exempt from
9 prosecution and punishment for perjury committed in so
10 testifying.

11 (4) Complaints, orders, and other process and papers
12 of the Board, its member, agent, or agency, may be served
13 either personally or by registered mail or by telegraph or
14 by leaving a copy thereof at the principal office or place of
15 business of the person required to be served. The verified re-
16 turn by the individual so serving the same setting forth the
17 manner of such service shall be proof of the same, and the
18 return post office receipt or telegraph receipt therefor when
19 registered and mailed or telegraphed as aforesaid shall be
20 proof of service of the same. Witnesses summoned before
21 the Board, its member, agent, or agency, shall be paid the
22 same fees and mileage that are paid witnesses in the courts
23 of the United States, and witnesses whose depositions are
24 taken and the persons taking the same shall severally be en-

1 titled to the same fees as are paid for like services in the
2 courts of the United States.

3 (5) All process of any court to which application may
4 be made under this Act may be served in the judicial district
5 wherein the defendant or other person required to be served
6 resides or may be found.

7 (6) The several departments and agencies of the Gov-
8 ernment, when directed by the President, shall furnish the
9 Board, upon its request, all records, papers, and information
10 in their possession relating to any matter before the Board.

11 SEC. 12. Any person who shall willfully resist, prevent,
12 impede, or interfere with any member of the Board or any
13 of its agents or agencies in the performance of duties pur-
14 suant to this Act shall be punished by a fine of not more than
15 \$5,000 or by imprisonment for not more than one year, or
16 both.

17 LIMITATIONS

18 SEC. 13. (a) Nothing in this Act, except as specifically
19 provided for herein, shall be construed so as either to inter-
20 fere with or impede or diminish in any way the right to
21 strike, or to affect the limitations or qualifications on that
22 right.

23 (b) (1) With respect to a bargaining unit, no employer
24 shall engage in a lockout involving employees nor shall a
25 labor organization recognized as the representative of em-

1 ployees pursuant to section 9 engage in or induce or encour-
2 age any individual or any other labor organization as defined
3 in this Act or in the National Labor Relations Act, as
4 amended, to engage in any strike, picketing, or similar ac-
5 tivity without giving the opposing party twenty days' written
6 notice (by personal service, or by certified or registered mail
7 requesting a return receipt) of its intention to do so, which
8 notice shall be effective for twelve months.

9 (2) Any party receiving a notice of intent under para-
10 graph (1) of this subsection may invoke a forty-day period
11 of mediation by giving written notice thereof (by personal
12 service or by certified or registered mail requesting a return
13 receipt) at any time during the twelve-month effective pe-
14 riod of the opposing party's notice of intention. Any such
15 notice of mediation shall be served upon the opposing party,
16 the Federal Mediation and Conciliation Service, and the
17 Board. The forty-day period shall commence at the end of
18 the twenty-day notice of intention period, or immediately
19 upon receipt by the opposing party, whichever is later:
20 *Provided*, That any party which has received a notice of
21 intention may invoke only one such forty-day period with
22 respect to each bargaining unit during the twelve-month
23 period following receipt of that notice of intention, or the
24 remaining term of a collective-bargaining agreement cover-
25 ing that unit, whichever period is shorter.

1 (3) Immediately upon receipt of such notice by it, the
2 Federal Mediation and Conciliation Service shall assign a
3 mediator to assist in the resolution of the dispute. If after
4 twenty days from the commencement of the forty-day period
5 the parties have not resolved the dispute, the Federal Media-
6 tion and Conciliation Service shall furnish the parties with
7 a list of five names (excluding all regular employees of the
8 United States Government) from which the parties shall
9 choose a special referee under procedures provided by the
10 Federal Mediation and Conciliation Service. The special
11 referee shall proceed to hear the dispute in accordance
12 with rules and regulations promulgated by the Federal
13 Mediation and Conciliation Service for such cases and shall,
14 not later than five days before the end of the forty-day period
15 recommend a collective-bargaining agreement with respect
16 to rates of pay, hours of employment, and other conditions
17 of employment. If the dispute is not otherwise resolved by
18 the parties, such recommendation shall be binding upon
19 the invoking party if accepted by the other party before
20 the forty-day period expires.

21 (4) No party shall lock out, strike, or engage in any
22 similar activity during the twenty-day notice of intention
23 period provided in paragraph (1) of this subsection, or the
24 forty-day mediation period provided in paragraph (2) of
25 this subsection: *Provided*, That where a party, having given

1 a notice of intention required by paragraph (1) of this sub-
2 section and having awaited the expiration of the twenty-day
3 period there provided, is engaged in a lockout, strike, or
4 similar activity which does not otherwise violate this section
5 13, such activity shall not be rendered unlawful by the filing
6 of a subsequent notice of intention under paragraph (1) of
7 this subsection by another party.

8 (5) Any special referee shall be entitled to receive com-
9 pensation at a rate specified at the time of actual service for
10 grade GS-18 in section 5332 of title 5, United States Code,
11 including traveltime and shall be allowed travel expenses,
12 including a per diem allowance in accordance with section
13 5703 (b) of title 5, United States Code, when engaged in
14 the performance of mediation services.

15 (6) A recommendation of a special referee, which has
16 become binding on the parties under the provisions of para-
17 graph (3) of this subsection, shall be deemed a contract be-
18 tween an employer and a labor organization as that term is
19 used in section 301 of the Labor-Management Relations Act
20 of 1947. Such a recommendation shall be conclusive unless
21 found by a court of competent jurisdiction to be arbitrary or
22 capricious in which case it shall be set aside. The commence-
23 ment of an action seeking judicial review of such a recom-
24 mendation shall not, unless otherwise ordered by a court of

1 competent jurisdiction, operate to stay the application of the
2 recommendation.

3 SEC. 14. (a) Nothing herein shall prohibit any indi-
4 vidual employed as a supervisor from becoming or remain-
5 ing a member of a labor organization, but no employer sub-
6 ject to this Act shall be compelled to deem individuals de-
7 fined herein as supervisors as employees for the purpose of
8 any law, either national or local, relating to collective
9 bargaining.

10 (b) Nothing in this Act shall be construed as authorizing
11 the execution or application of agreements requiring mem-
12 bership in a labor organization as a condition of employment
13 in any State or territory in which such execution or applica-
14 tion is prohibited by State or territorial law.

15 (c) (1) The Board, in its discretion, may, by rule of de-
16 cision or by published rules adopted pursuant to the Adminis-
17 trative Procedure Act, decline to assert jurisdiction over any
18 labor dispute involving any class or category of employers,
19 where, in the opinion of the Board, the effect of such labor
20 dispute on commerce is not sufficiently substantial to warrant
21 the exercise of its jurisdiction.

22 (2) Nothing in this Act shall be deemed to prevent or
23 bar any agency or the courts of any State or territory (includ-
24 ing the Commonwealth of Puerto Rico, Guam, and the
25 Virgin Islands), from assuming and asserting jurisdiction

1 over labor disputes over which the Board declines, pursuant
2 to paragraph (1) of this subsection, to assert jurisdiction.

3 (3) The Board is authorized and directed to adminis-
4 ter and apply the provisions of this Act with due regard to
5 the special characteristics of agriculture and employment in
6 agriculture.

7 SEC. 15. Wherever the application of the provisions of
8 section 272 of chapter 10 of the Act entitled "An Act to
9 establish a uniform system of bankruptcy throughout the
10 United States," approved July 1, 1898, and Acts amendatory
11 thereof and supplementary thereto (11 U.S.C. 672), con-
12 flicts with the application of the provisions of this Act, this
13 Act shall prevail: *Provided*, That in any situation where the
14 provisions of this Act cannot be validly enforced, the pro-
15 visions of such other Acts shall remain in full force and
16 effect.

17 SEC. 16. If any provision of this Act, or the applica-
18 tion of such provision to any person or circumstances, shall
19 be held invalid, the remainder of this Act, or the applica-
20 tion of such provision to persons or circumstances other
21 than those as to which it is held invalid, shall not be
22 affected thereby.

23 SEC. 17. (a) It shall be unlawful, for the purpose of
24 this section only, in an industry or activity affecting com-
25 merce, for any labor organization to engage in any activity

1 or conduct defined as an unfair labor practice in section
2 8 (b) (4) of this Act.

3 (b) Whoever shall be injured in his business or prop-
4 erty by reason of any violation of subsection (a) may sue
5 therefore in any district court of the United States sub-
6 ject to the limitations and provisions of section 301 of the
7 National Labor Relations Act, as amended, without respect
8 to the amount in controversy, or in any other court having
9 jurisdiction of the parties, and shall recover the damages by
10 him sustained and the cost of the suit.

11 SEC. 18. This Act shall become effective upon the ex-
12 piration of ninety days after the date of enactment except
13 that the authority of the President to appoint certain officers
14 conferred upon him by section 3 of this Act may be exer-
15 cised forthwith.

16 AUTHORIZATION

17 SEC. 19. There are authorized to be appropriated to
18 carry out the provisions of this Act the sum of \$3,600,000
19 annually. Such authorization will be prorated from the date
20 of enactment until the close of the fiscal year ending June
21 30, 1972, with such sums as may be necessary for suc-
22 ceeding fiscal years.

Text of Labor Management Relations Act, 1947, as Amended by Public Law 86-257, 1959*

[Public Law 101—80th Congress]

AN ACT

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

FINDINGS AND POLICIES

SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining

*Section 201(d) and (e) of the Labor-Management Reporting and Disclosure Act of 1959 which repealed Section 9(f), (g), and (h) of the Labor Management Relations Act, 1947, and Section 505 amending Section 302(a), (b), and (c) of the Labor Management Relations Act, 1947, took effect upon enactment of Public Law 86-257, September 14, 1959. As to the other amendments of the Labor Management Relations Act, 1947, Section 707 of the Labor-Management Reporting and Disclosure Act provides:

The amendments made by this title shall take effect sixty days after the date of the enactment of this Act and no provision of this title shall be deemed to make an unfair labor practice, any act which is performed prior to such effective date which did not constitute an unfair labor practice prior thereto.

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lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

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and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

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 take a secret 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.

SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of \$12,000* a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected

*Pursuant to Public Law 90-206, 90th Congress, 81 Stat. 644, approved December 16, 1967, and in accordance with Section 225(f)(1) thereof, effective in 1969, the salary of the Chairman of the Board shall be \$40,000 per year and the salaries of the General Counsel and each Board member shall be \$38,000 per year.

by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

TEXT OF AMENDED ACT

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(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

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(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8(b)(4) (B) the terms "any employer", "any person engaged in commerce or in industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, member-

ship in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e).*

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c)(1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of

*Section 8(f) is inserted in the Act by subsection (a) of Section 705 of Public Law 86-257. Section 705(b) provides:

Nothing contained in the amendment made by subsection (a) shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

(d) Whenever an order of the Board made pursuant to section 10(c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e)(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8(a)(3), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

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PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C).

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope.

Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d) Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States- (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like char-

acter in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organizations a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D).

(m) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (l).

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the

evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3)*

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

*Section 11(3) is repealed by Sec. 234, Public Law 91-452, 91st Congress, S. 30, 84 Stat. 926, October 15, 1970. See Title 18, U.S.C. Sec. 6001, et seq.

SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U.S.C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 17. This Act may be cited as the "National Labor Relations Act."

SEC. 18. No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 9 of the National Labor Relations Act, as amended, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 9(f), (g), or (h) of the aforesaid Act prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 9(f), (g), or (h) of the aforesaid Act prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this Act upon any person for failure to honor any election or certificate referred to above, prior to the effective date of this amendment: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 10(e) or (f) and which have become final.

EFFECTIVE DATE OF CERTAIN CHANGES*

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act

*The effective date referred to in Sections 102, 103, and 104 is August 22, 1947. For effective dates of 1959 amendments, see footnote on first page of this text.

which did not constitute an unfair labor practice prior thereto, and the provisions of section 8(a)(3) and section 8(b)(2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8(3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service

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shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of \$12,000* per annum. The Director shall not engage in any other business, vocation, or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor," approved March 4, 1913 (U.S.C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication

*Pursuant to Public Law 90-206, 90th Congress, 81 Stat. 644, approved December 16, 1967, and in accordance with Sec. 225(f)(11) thereof, effective in 1969, the salary of the Director shall be \$40,000 per year.

with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

SEC. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of \$25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communi-

cation among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of \$50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board

of inquiry shall report to the President the current position of the parties and the efforts which has been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE-BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective-bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or the connection with the unloading, of the cargo of such vehicle: *Provided*, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees,

or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training program: *Provided*, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; or (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: *Provided*, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice:

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Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds.*

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., title 29, secs. 101-115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c)(5)(B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act, as amended.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U.S.C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any

*Section 302(c)(7) has been added by Public Law 91-86, 91st Congress, S. 2068, 83 Stat. 133, approved October 14, 1969.

primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

TITLE IV

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

* * * * *

TITLE V

DEFINITIONS

SEC. 501. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

SAVING PROVISION

SEC. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SEPARABILITY

SEC. 503. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

