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COLLECTIVE-BARGAINING REPRESENTATION OF POSTAL EMPLOYEES

GOVERNMENT

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HEARINGS

BEFORE THE

COMMITTEE ON POSTAL FACILITIES,
MAIL, AND LABOR MANAGEMENT

OF THE

COMMITTEE ON
OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

H.R. 5023 and H.R. 56

BILLS RELATING TO COLLECTIVE-BARGAINING REPRESENTATION OF POSTAL EMPLOYEES AND UNIFORMITY IN LABOR RELATIONS

FEBRUARY 11 AND 23, 1976

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94TH CONGRESS
1ST SESSION

H. R. 56

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1975

Mr. CHARLES H. WILSON of California introduced the following bill; which
was referred to the Committee on Post Office and Civil Service

A BILL

To amend the Postal Reorganization Act of 1970, title 39,
United States Code, to provide for uniformity in labor
relations.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That title 39, United States Code (84 Stat. 719), is
- 4 amended by striking out subsection (c) of section 1209 in
- 5 its entirety, effective upon enactment.

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94th CONGRESS
1st Session

H. R. 5023

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1975

Mr. MITCHELL of Maryland (for himself, Mr. CONYERS, Mr. HARRINGTON, Mr. BROWN of California, Mr. TSONGAS, Mr. WHITEHURST, Mr. ROSENTHAL, Ms. ABZUG, Ms. SPELLMAN, Mr. FORD of Tennessee, Mr. DELLUMS, Mr. BADILLO, Mr. HENDERSON, Mr. DIGGS, and Ms. BURKE of California) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

Relating to collective bargaining representation of postal employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 2 of the Act of August 12, 1970 (84 Stat. 719, 735; 39 U.S.C. ss1206 (b)), is amended by adding at the end thereof the following sentence: "No procedures established under this section shall preclude employees from being represented in grievance and adverse actions arising under the agreement by representatives of their own choosing. In the event an employee selects a representative other than a bargaining representative recognized under section 1203 of this title the bargaining representative shall have the right to be present during any proceedings upon the grievance or adverse action."

COLLECTIVE BARGAINING REPRESENTATION OF POSTAL EMPLOYEES

WEDNESDAY, FEBRUARY 11, 1976

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON POSTAL FACILITIES,
MAIL, AND LABOR MANAGEMENT,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 311, Cannon House Office Building, Hon. Charles H. Wilson (chairman of the subcommittee) presiding.

Mr. WILSON. The subcommittee will come to order.

At today's hearing, the subcommittee will explore some fundamental issues relating to individual employee rights versus union security.

Specifically, we will consider H.R. 5023, which if enacted would allow postal employees to choose their own representatives at grievance and adverse action proceedings, and H.R. 56, which would allow recognized postal unions to negotiate with management to establish union security provisions (that is, union shop, agency shop, et cetera) in conformity with the provisions of the National Labor Relations Act.

Because these bills deal with two sides of the same coin, so to speak, I think it is appropriate to address both of them this morning.

Before I comment further on the legislation at hand, however, there is one point that I want to make for the benefit of a few individuals who have made recent public statements, and that is that we in the Congress, and specifically those of us who serve on the Post Office and Civil Service Committee, have every intention of continuing our rigorous oversight of the Postal Service.

In my opinion, it is the height of hypocrisy to, on the one hand, lobby for congressional action on certain legislation and then castigate Congress for "interference" on the other issues.

H.R. 5023, sponsored by Congressman Parren Mitchell, is identical to legislation which this subcommittee held hearings on in November 1973.

At that time I expressed fear that the concept of modifying exclusive recognition could endanger the labor union movement within the Postal Service, and therefore I called for a nonlegislative solution to this issue.

Unfortunately, no compromise has yet been reached despite my continuing efforts to bring the concerned parties together through a series of private meetings which I organized and attended.

Now, it is time to reevaluate the situation, and that is the reason for today's hearing. Essentially, the issue at hand is the continued existence of the National Alliance of Postal and Federal employees, a union with a long history of dedicated service to minority employees in the Postal Service, as a viable organization within the field of postal employee representation.

Perhaps a compromise on this issue can still be reached through application of section 9(a) of the National Labor Relations Act, which takes note of individual employee rights in grievance procedures, or through legislation which would accommodate the National Alliance, with its unique history and record of service, but prevent a wholesale gutting of the exclusive recognition concept.

At any rate, fair treatment for the National Alliance is the central issue here today, and I hope that the other concerned parties will remove the necessity for us to pass H.R. 5023 by showing a new willingness to compromise. Because of the number of witnesses we're going to ask each of the witnesses if they will restrict their comments to 5 minutes in order that the members will have time to ask questions.

You may submit additional statements for the record, but try and keep your remarks within the 5-minute limit, if you possibly can.

For our first two witnesses, I'm going to ask Congressman Mitchell and Congressman Fauntroy if they will join us at the table and make their opening remarks.

STATEMENT OF HON. PARREN MITCHELL AND HON. WALTER FAUNTROY, REPRESENTATIVES IN CONGRESS OF THE UNITED STATES FROM THE STATE OF MARYLAND AND THE DISTRICT OF COLUMBIA, RESPECTIVELY

Mr. WILSON. Congressman Mitchell, since you are the principal author of the legislation, why don't you begin?

Mr. MITCHELL. Thank you very much, Mr. Chairman and members of the committee.

I recognize the tremendous time constraints that this committee will be operating under; therefore, I shall be very brief.

The bulk of the defense, the arguments that I would make for the legislation which I have introduced will be presented by the president of the National Alliance of Postal and Federal Employees, Mr. Robert White.

In addition, I will read a statement from another Member of Congress, Congressman Robinson of Virginia, because I generally concur in his statement.

Mr. WILSON. You may present his statement.

STATEMENT OF HON. J. KENNETH ROBINSON, A MEMBER OF CONGRESS FROM THE STATE OF VIRGINIA

Mr. MITCHELL [reading]. Mr. Chairman, I appreciate the opportunity to submit a brief statement in behalf of the bill, H.R. 5023, by Mr. Mitchell of Maryland, to which my bill, H.R. 8809, is identical. This is a simple bill, Mr. Chairman, but it embraces, in my view, and in the most earnest conviction of the employees affected, a most important principle.

From the inception of a formalized grievance procedure in the federal service, the right of an employee to be represented by an organization or individual of his or her choice has been recognized. Executive Order 10988 of President Kennedy recognized this right. In the enactment of the Postal Reorganization Act, however, this right was not set forth in specific terms with reference to employees of the Postal Service.

The result has been that the national craft unions having collective bargaining agreements with the Postal Service have asserted an exclusive right to represent employees—including employees who are members of other employee organizations, or of no organizations—in grievance and adverse action matters.

In effect, this is an “agency shop,” which the Congress has not authorized. No employee of the Federal service should be barred from making a personal choice of representation in these matters, irrespective of any collective bargaining agreement which the Postal Service may have negotiated with an organization of which the employee is not a member, and by which the employee does not wish to be represented.

This inequity merits prompt correction, which can be accomplished through enactment of H.R. 5023.

That is in essence Mr. Robinson’s statement, Mr. Chairman.

Mr. WILSON. Thank you. Do you have any further comments?

Mr. MITCHELL. May I indicate, Mr. Chairman, members of the committee, I have no argument, no vendetta against the union which is now operating in terms of exclusive bargaining. It’s not a vendetta against the union at all, rather there is a principle involved here and that is the principle that allows an employee to have a choice. That is not true under the present circumstance.

I think my bill will enable the employee to have a choice. I would hope that the committee will act favorably upon legislation which I have submitted.

Mr. Chairman and members of the committee, as you well know, we are under great constraints in this Congress—time pressures.

There is a 10 o’clock meeting of the Budget Committee on which I serve, and I hope you and the persons in attendance forgive me if I leave at 10 o’clock in order to make that meeting.

This concludes my presentation.

Mr. WILSON. Thank you very much, Mr. Mitchell.

Mr. Fauntroy.

Mr. FAUNTROY. Thank you.

I am delighted to have this opportunity to appear before the distinguished members of this subcommittee in support of H.R. 5023 and the National Alliance which has devoted a lifetime to assuring that minority employees are able to achieve reasonable working conditions, be free from harassment and have access to representatives of their own choosing to assist them in any grievance or other complaint that might arise which affects them.

I am only going to submit my statement, Mr. Chairman, in order that others may have more time to testify; but I do want you and other members of the committee to know that I am in full support of this legislation, and urge your support of it.

Mr. Chairman, as you well know, I represent more people than any single member of the House; indeed, there are more people in the Dis-

trict of Columbia than reside in 10 States of the Union. All of them are right at my doorstep.

Mr. Chairman, over the years, it has been my privilege to serve this District, I've had to pick up a number of complaints that quite properly ought to be handled by the Postal Alliance and which would have been handled by the Postal Alliance had not the spirit of the Reorganization Act been violated in this regard.

It's very clear to me that the concerns of the minority workers in the Postal Service will not be fully represented and fully addressed until and unless this is clarified; and the right of the postal employees to have representation of their own choosing is acknowledged, and is accepted as is indicated by the National Labor Relations ruling on this question in the spirit of the law in the first instance.

Thank you so much.

Mr. WILSON. Thank you, Mr. Fauntroy. I want to thank both of you gentlemen for being with us.

[The statement submitted by Mr. Fauntroy follows:]

PREPARED STATEMENT OF HON. WALTER E. FAUNTROY

Mr. Chairman, it is with a great deal of pleasure that I have the opportunity to appear before this Subcommittee in support of H.R. 5023, a bill which would provide that no procedure as established under the Postal Reorganization Act shall operate to preclude an employee from being represented in grievance and adverse actions by a representative of his own selection whether or not that representative is the bargaining representative recognized under section 1203 of the act.

As you know, Mr. Chairman, I appeared in support of this legislation on November 7, 1973, and I submit as a part of the record a copy of my testimony of that date. It is my view that little has changed that would warrant additional delay in the passage of this legislation. Congress has not only the right, but an obligation to assure that a person is able to select a representative of their own choosing for purposes of advocating or advising them of their rights in any grievance or adverse action.

The large number of postal employees who live and work in the District of Columbia has heightened my interest and concern of the need for this legislation. While the appointment by the Postal Service, in this city, of a black postmaster did serve to markedly reduce the numbers of postal employee complaints, the retirement in December 1973, of this man, Martin L. Simms, has caused a general concern to be expressed of whether or not the Service will continue to be responsive to the concerns of minority employees.

I call to the attention of this subcommittee the fact that as of January 15, 1976, the Service, in its Postal Bulletin, stated that employees may submit their discrimination complaints only through an authorized representative. This comes after four years of concerted efforts in directing the Postal Employees to Authorized Stewards. This further action is interpreted by many employees to mean that the Postal Service is not being responsive to minority employees or concerned with their rights.

When the President issued Executive Order No. 11491, Labor-Management Relations In The Federal Service, on October 29, 1969, he specifically stated that all employees of the Executive Branch shall have access to the grievance procedure, including those negotiated. Further, the employees retained their rights to pursue their grievance and adverse actions appeals through statutory appeal procedures. This recognition of the individual employee right, by the President, continued today under the provisions of Executive Order 11491, as amended by E.O. 11616, 11636, and 11838. The right of the individual employee to select a representative of his/her own choosing in grievances and adverse actions is clearly recognized and protected in the Executive Orders.

I bring up this occurrence because I believe that unless this Committee and the Congress acts to assure that the National Alliance is able to represent its members, they will be effectively precluded from any access to the grievance proceedings. This will destroy them, and I do not believe that it was our intention, passing the Postal Reorganization Act, to permit this to happen.

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[The prepared statement presented on November 7, 1973, and referred to above, follows:]

PREPARED STATEMENT BY HON. WALTER E. FAUNTROY IN SUPPORT OF AN AMENDMENT TO THE POSTAL REORGANIZATION ACT, WEDNESDAY, NOVEMBER 7, 1973

Mr. Chairman, I am most appreciative of the efforts which you and your staff have extended to make it possible for me to testify before this distinguished Subcommittee on the Bill introduced by our colleague, Bill Clay, which would provide that no procedure as established under the Postal Reorganization Act shall operate to preclude an employee from being represented in grievance and adverse actions by a representative of his own selection whether or not that representative is the bargaining representative recognized under Section 1203 of the Act.

As the Congressman from the District of Columbia in which many postal employees are residents, I am acutely aware of the need for this clarifying legislation. Many postal employees have complained to my office of being unable to have their representative and union represent them in proceedings which I am led to believe were to be protected in the Act. In 1970, Congressman Hanley specifically asked Postmaster General Blount whether the reform bill would continue the right of the employee to choose their own representatives regardless of the status of the union. His reply was that one would have the opportunity for a fair hearing with a representative of their own choosing regardless of that organization's status.

From the colloquy that followed, the spokesmen for the National Alliance indicated that they would live with an agreement that gave rise to wage bargaining at the national level by whatever organization had either the most members or could win an election provided that they continued to maintain a check-off provision and be allowed to represent their members in their locals. Subsequent events indicated that the postal service did not choose to interpret the provisions of the bill—which are clear in the reports and hearings as allowing for such representation.

Personally, I am not concerned with which union is the bargaining unit in the final analysis. I am concerned, however, with a number of issues which are impliedly raised by the interpretation which the department and some other unions have placed on the Bill. In the first place, it would destroy an old established union which has a history and tradition of representing its members in a vigorous manner whenever their rights have been abused. The fact is that the National Alliance is the only union which historically and presently looks after the rights of many, many minority employees who are in the Postal Service. In the second place, this precedent, if allowed to be maintained, will effectively destroy the ability of any Federal employee to have his own representative advise, counsel, and advocate his rights with a department.

It is my understanding that the Alliance has strived very hard to avoid the need for this clarifying legislation. The Postal Service, however, has refused to accede to the understandings of the Congress and it has refused to abide by the language in the National Labor Relations Act, which states that: "any individual employee or 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."

The National Alliance of Postal and Federal Employees is an employee union that has several thousands members in the Postal Service. This organization is seriously adversely affected by the lack of such a provision in the Postal Reorganization Act to allow its members to select this organization to represent them in grievance proceedings. Under the provisions of the contract negotiated by the Postal Service and the craft unions, the National Alliance of Postal and Federal Employees is being denied the right to represent its members under the grievance procedure. The National Labor Relations Board has held that the denial of the right to select one's own representative, the National in this case, is an unfair labor practice. The Postal Service refuses to abide by the National Labor Relations Board's ruling. As the thousands of employees are being denied their right, this action on the part of the Postal Service is causing irreparable damage to the National Alliance, as a union.

The National Alliance of Postal and Federal Employees recently celebrated its Sixtieth Anniversary with a pilgrimage to Chattanooga, Tennessee, the place of its founding. Noted in its history is that this organization, over the past 60 years, has been instrumental in the creation of many constructive laws, regulations, and policies, benefiting Postal and Federal employees. The Amendment before you is another constructive effort on the part of the Alliance to help the Congress perfect one of these laws.

Although I am here in support of H.R. 7183, as I view the many complaints that I have received from the Washington, D.C. postal employees, I can only believe that some of these complaints would not be forthcoming if there were a Postmaster here that was more sensitive to the employees' problems. Although I feel that a Black Postmaster would be ideal for these more than 10,000 employees, of which over 80 percent are Black, I nevertheless find it strange that the Eastern Region, alone, has appointed some more than 780 Postmasters since January 1, 1973 but has not filled the position in Washington, D.C. that has been vacant for three years. I hope that this Committee will examine this oversight by the service as soon as it completes work on this bill.

In the meantime, I urge that you support the passage of this very simple clarifying amendment because the work which this union is now doing is not going to be done by anyone else. However hard someone else may try, the fact is that our minority workers in the government will continue to be underrepresented and mis-represented unless the rights of a minority union are protected. The Postal Reorganization Act was an attempt in this direction; but, the department didn't heed the Congressional intent making it necessary for us to more fully clarify our position. I hope we will do it and make it very plain to the Executive Branch that we do not take our responsibilities of assuring representation for our people lightly.

Mr. Chairman, again, I want to express my deep and sincere appreciation to you for your kindness in scheduling my appearance. I hope that my views on this bill are helpful to you in your deliberation.

Mr. WILSON. Mr. Mitchell, you have a distinguished group of co-authors on the legislation, including the chairman of this committee.

I'll ask Mr. Clay if he has any comments at this time or any questions to ask you.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. Fauntroy, in the last paragraph of your statement, you express some grave fears that unless the situation is corrected, the National Alliance will be eliminated.

Would you care to elaborate on this?

Mr. FAUNTROY. Mr. Chairman, if the Alliance is not allowed to represent those who chose them as their desired representatives, it cannot survive. It exists for the purpose of representation, historically, for minority workers in the Postal Service, as you know. I need not remind you of the extent to which discrimination has been a part of the experience of minorities in the Postal Service and indeed, persists today.

To take from the employees and from the alliance the opportunity to work together in this regard would be detrimental for the Alliance.

Mr. CLAY. Mr. Mitchell, I know you have a certain amount of expertise with regard to this particular piece of legislation and with the whole Reorganization Act.

Is it your opinion that the intent of Congress has been followed in this situation?

Mr. MITCHELL. Mr. Clay, it is certainly not my opinion that the intent of Congress has been followed.

I would call your attention to my testimony given last year on this bill in which I attempted to spell out the legislative history of the bill. It was very clear in terms of that legislative history that the National Alliance of Postal and Federal Employees was to be given

an equal opportunity to continue serving as representatives for various persons employed in the post office. This was clearly spelled out.

What happened was, when we started fashioning together the operation under the new reform, it was politely ignored. I think my bill does give the Congress an opportunity to remedy this situation, namely the ignoring of the intent which was in the Reorganization Act.

Mr. CLAY. Thank you.

I have no further questions, Mr. Chairman.

Mr. WILSON. Mr. Brodhead?

Mr. BRODHEAD. I have no questions.

Mr. WILSON. Mr. Jenrette, do you wish to ask questions at this time?

Mr. JENRETTE. No questions, thank you.

Mr. WILSON. Happy to have you join us this morning.

Gentlemen, thank you very much. I know you have other things you have to attend to.

Mr. MITCHELL. We both thank you, Mr. Chairman, for calling hearings on this bill. If you need further testimony, we will be delighted to come back.

Mr. WILSON. Will the representatives of the National Alliance of Postal and Federal Employees, Mr. John White, Mr. Robert White, and Mr. Wesley Young, please come forward.

Mr. Robert White, if you'd like to proceed.

STATEMENT OF ROBERT L. WHITE, PRESIDENT, NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES, ACCOMPANIED BY JOHN WHITE, PRESIDENTIAL AIDE, NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES, AND WESLEY YOUNG, NATIONAL VICE PRESIDENT, NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES

Mr. R. WHITE. Thank you very much, Mr. Chairman.

Mr. Chairman, and committee members, we welcome this opportunity to again appear before this subcommittee to express the views of the National Alliance of Postal and Federal Employees, on legislation which affects the lives of our members as well as, the lives of thousands of other postal employees. However, before starting my testimony, I wish to present to the subcommittee, the two officers of our union that are accompanying me this morning. On my left is Mr. Wesley Young, my vice president from Chicago, Ill., and on my right is Mr. John W. White, our legislative director.

Mr. Chairman and committee members, we cannot imagine a more appropriate time in the history of our great country, for a hearing to have been scheduled on a bill that contains the few, simple, but extremely fundamental words, that are contained in H.R. 5023. The contents of this bill merely pertains to protecting one of the basic and most important human principles that caused a migration to this country some 200 years ago, freedom of choice. This bill does not provide anything special for any individual or group of Americans. It relates only to what has already been provided for every American under the Bill of Rights. Unfortunately, these first amendment liberties are

slowly but perceptably being eroded from the lives of American citizens. Many of them are the offsprings of the founders of this new Republic, some 200 years ago. In spite of the Bill of Rights, even today, the exercise of many freedoms is a matter of debate, regularly contested in our courts. The National Alliance of Postal and Federal Employees contends that, this is not as it should be. We are here in front of this congressional committee, attempting to gain support for a bill which will only return to a group of people, a freedom that, though already guaranteed by the Constitution of the United States, has been taken away by those in power.

H.R. 5023 is not antilabor as many critics of the bill will allege. This bill is only intended to correct a serious inequity, with reference to the rights of postal employees, which developed after the enactment of the Postal Reorganization Act.

When President Kennedy signed Executive Order 10988 in 1961, which permitted limited labor-management activities in the postal and Federal service, it was made specifically clear that, every employee would have the right to select a representative of their own choice, to handle any grievances they may have with their employer. This type of representation worked well and harmoniously for 9 years. There is not a single instance of discord or disruption on record that can be related to the employee's "freedom of choice" in selecting a representative, whenever such employee had a grievance with his employer.

When Congress enacted the Postal Reorganization Act, it apparently intended to continue the right for postal employees with grievances, to select a representative of their own choice. Unfortunately, however, Congress neglected to specifically provide for the continuance of this right. The U.S. Postal Service and the craft unions subsequently chose to exploit this omission.

Congress, during its deliberations on the Postal Reorganization Act, also expressed its concern and intentions to protect the rights of minority unions. This concern is contained in the following legislative history and statements from Members of Congress during the hearings on the Postal Reorganization Act.

On August 22, 1970, Congressman James M. Hanley, chairman of the Subcommittee on Postal Service, specifically asked Postmaster General Blount, whether the bill would continue the right of employees to choose their own representatives to process grievances, including minority unions.

Mr. HANLEY. I would like to clarify in my mind the matter of union recognition. And as you refer to page 6 of your testimony, you suggest that the assurance be given to all postal employees, regarding a fair hearing with representatives of their own choosing. I would be interested in your comments here. Now, are you suggesting representatives regardless of what status that union or organization might enjoy?

Mr. BLOUNT. Mr. Hanley, I think that it means precisely what it says, that they would have an opportunity for a fair hearing with a representative of their own choosing.

Mr. HANLEY. Regardless of the status of that particular union or organization?

Mr. BLOUNT. Yes; that could be, Mr. Hanley, an individual or anybody else. It is not qualified in the legislation; it is a representative of their own choosing.

During the same hearings on August 22, 1970, Congressman Morris Udall of Arizona indicated the committee's position during the following exchange with the then president of the National Alliance:

Mr. UDALL. If you personally had your—well, let me ask it another way—would you be content, would you be satisfied, could your organization survive if we had a situation under something like this bill, whereby wages were bargained for on a national basis by whatever organization had the most membership or could win an election, but that your organization would continue to have dues checkoff and would continue to have this kind of local formal, or national formal, plus local exclusive in areas where you have a majority to continue vigorously to represent your people on discrimination, on employee grievances, on working conditions and other things not involving wages in those local post offices? Could you survive under that system?

Mr. SMITH. This, I think we could live with, hoping that the national negotiators on wages wouldn't come up with some of the very sad types of agreements they have come up to in the areas in which they have been negotiating.

During Senate debate upon the PRA, Senator Goodell noted that (Congressional Record, p. S10355, June 30, 1970):

It is conceivable, under the House language and the Senate language, that we could come out of conference with a provision that would permit local unions to continue to exist—I believe that is true of the Senate Bill—but they would exist only to handle grievance proceedings, and they could not be involved in real negotiations as far as wages, working conditions, and other factors that are so critical are concerned.

During the same Senate debate (Congressional Record, p. S10354), Senator Fong, commenting on the plight of the national alliance, stated that, "We had intended in this bill to give them the right to represent their members in grievances. We had intended to do this but it did not get in the bill."

On August 5, 1971, Congressman Clarence D. Long of Maryland wrote Postmaster General Blount as follows:

(The National Alliance of Postal and Federal Employees has informed me that Article VI of the transitional agreement negotiated by approximately 650,000 postal employees and the U.S. Postal Service has been interpreted by some people to give the craft postal unions the exclusive right to represent employees in grievance proceedings.) Such an interpretation of Article VI would prevent the National Alliance from representing any postal employees—including its own members—in grievance and adverse action proceedings and in equal opportunity complaints. In fact, the Alliance would be unable to function as a labor organization during this transitional period, and its existence would be threatened.

The Congress did not intend that the Alliance be unable to represent postal employees during the transitional period.

On August 3, 1971, Congressmen Augustus F. Hawkins; John Conyers, Jr.; Charles C. Diggs, Jr.; Charles B. Rangel, and Ronald V. Dellums wrote the Postmaster General as follows:

Specifically we support the construction of this agreement in accordance with what we deem to have been Congressional intent and the language of the Postal Reorganization Act of 1970. Such construction in our opinion would give equal advantages to the Alliance with other employee groups.

To prevent the Alliance from representing its membership in grievance matters during the transitional period not only defeats the purposes of the postal reorganization, but will destroy an effective representative force for minority postal employees.

On August 3, 1971, Congressman Robert N. C. Nix, then chairman of the Subcommittee on Postal Facilities and Mail, wrote Postmaster General Blount, stating as follows:

I have been informed that some persons interpret Article VI of the transitional agreement, entitled Grievance Procedure and Discipline, as limiting the right of employee representation in grievance proceedings to those unions who are signatories of the agreement.

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This interpretation would deprive the National Alliance of Postal and Federal Employees of their essential function during the transition period of this contract, that is, the representation of their employee members during grievance proceedings. This would in effect, during the vital transition period prior to the determination of appropriate units by the National Labor Relations Board and the holding of secret ballot elections by the Board, place the "National Alliance" in an unequal position in appealing to postal workers for the right to represent them.

This certainly was not the intent of Congress in enacting the Postal Reorganization Act.

Congress, in spite of these quoted intentions, failed to insert specific language in the Postal Reorganization Act to accomplish this purpose.

Therefore, Mr. Chairman and members of the subcommittee, H.R. 5023 will not only restore the postal employees a basic right which they should have as American citizens, it will also provide the Congress with an opportunity to correct a gross, unintended, inequity of justice to some citizens of these United States, who happen to be employees of their own Federal Government.

I would also like to refer this committee's attention to a memorandum dated August 8, 1975, from the Comptroller General of the United States, to the Honorable Gale W. McGee, chairman, Senate Committee on Post Office and Civil Service.

This memorandum is in response to an inquiry from Senator McGee, requesting views and comments on S. 1828. This is the Senate Bill that contains identical language as H.R. 5023. I would like to quote just one significant paragraph from this memorandum. It is as follows:

We endorse the amendment proposed by S. 1828 in that it has the effect of preserving the rights of Postal Service employees to be represented in certain important administrative proceedings by representatives of their choice.

The Comptroller General did suggest some modification and clarification in the language of the bill, as well as to some parts of title 39 of the United States Code.

I thought this subcommittee possibly may be interested in knowing that such an inquiry had been made and that the response from the Comptroller General was not adverse to this bill.

The National Alliance of Postal and Federal Employees, while feeling that as a minority union, we became a victim of a power play, nevertheless feels a greater concern for what has happened and is still happening to the postal employees. In spite of Congress explicit refusal to legislate a union shop, when enacting the Postal Reorganization Act, the U.S. Postal Service, through management orders and negotiations with the craft unions, are invoking union shop rules on its employees under the pretext that the NLRB sanctioned such actions. Again, we feel that what is happening is in violation of the intent of Congress.

In spite of the high pressured lobbying for a union shop that took place prior to the enactment of the Postal Reorganization Act, Congress refused to include such a provision in the act. Nevertheless, top management at the U.S. Postal Service is flaunting the will of Congress against a union shop, through negotiation and directives.

We congratulate Congress on its position against legislating a union shop in the U.S. Postal Service. We submit that Congress is not obliged to subject public employees to all the burdens and administrative gloss of collective bargaining in the private sector. In our opinion, the history of bargaining in the private sector, should not be used as

a reliable barometer for determining what should or should not be a part of public sector bargaining.

In conclusion, Mr. Chairman, and members of the subcommittee, I respectfully urge you to give favorable consideration to H.R. 5023. The language in this bill has now been incorporated into approximately nine different bills pending before this Congress. Favorable consideration from this subcommittee will certainly strengthen its possibility of reaching the House floor for a vote.

Also, I respectfully refer the attention of this subcommittee to the testimony of our attorneys which was submitted to a hearing on H.R. 7183, a bill of identical language which was pending before the 1st session of the 93d Congress. This testimony presents an in depth analysis of the legal ramifications which emerged pursuant to the enactment of the Postal Reorganization Act.

Mr. Chairman and committee members, we are aware of the fact that this hearing was scheduled to also provide for testimony on H.R. 56. I am sure that that this committee recognizes the extremely opposite views that are incorporated into these two bills. These bills are so incompatible that it is difficult to understand how they could be placed together for hearing purposes.

However, for the record, I wish to state, that the national alliance is unalterably opposed to H.R. 56, or any other type bill which has the effect of providing for union shops or union security within the Postal or Federal Service. The national alliance feels that the best union members are the ones who join voluntarily, because they believe in it and not because it was forced upon them.

In addition, unions are supposed to service the members that they purport to represent. Compulsory unionism does not stimulate excellent representation. No employee should be forced to join a union, or pay dues to a union simply because 51 percent of a group of employees voted for a particular union. This is particularly true when it is evident that such union is not properly representing the best interest of any segment of such employee group. Perhaps as a labor union, we should not take such a position. Also, I am sure that some will refer to our position as being antilabor; however, this is not the case.

We feel strongly that labor unions are necessary and that they have made a substantial contribution toward upgrading the standards of living for working people. We salute this effort and we encourage its continuation. We also wish to assist in this effort. Nevertheless, we feel that the right of postal and Federal employees to join or refrain from joining a labor union should be protected. Nor should these employees be forced to pay any type of fee to any labor union except through a freedom of choice, as a result of effective and satisfactory representation on the part of a labor union.

I wish to thank this committee for granting this union an opportunity to present our views on the two proposed bills. We will be pleased to answer any questions that you may wish to ask.

But before I go into the questions, I'd just like to take a second and make one comment; and this comment, Mr. Chairman, is in regards to what I feel—I'm not trying to question the right of anyone to put in their statement whatever they choose, but in this particular instance, the national alliance in preparing our statement tried to speak specifically to the question of the bill.

It took no issues with what the unions have done or past records or any of the other things which everyone says we constantly come in here to do.

We speak strictly in terms of the right which we feel every person is entitled to, that is the right to choose representatives of their own choosing, not only in the Postal Service, but anywhere in the country.

But in reading the statement that was put out by the American Postal Workers Union, I notice in the 19 pages of their statement they make an attack on the national alliance; on 18 different times our name is used in their statement.

I say they have a right to say whatever they want to say, but they are making it sound like the National Alliance is the culprit in this deal; and of course, we resent that.

The National Alliance is not the culprit; but they never go into the background of what the union, the craft unions have done all these years that even brought the National Alliance into existence.

We would not be in existence if the unions had represented black and other minorities many, many years ago; and as a result, we have found it necessary to have our own union.

These are the same unions and some of the same officers are heading the unions right now; officers who would not even take blacks and minorities into the union until 1960 when they were made to do it by an Executive order of the President of the United States. These are things that bother us and this is why it is necessary for us to maintain our union.

And if they think by any means they're going to chase the national alliance out of business, they have another thought coming.

You have right here a good example of the type of support that we have throughout the whole country, just a small group. They have stuck with us throughout the last 5 years while we have been in court trying to resolve inequities, and we know very well that the court has denied certain types of statements and positions that we've taken.

We still say the questions which have been raised have not been answered by anyone, not by the courts.

So, we're bringing it back to Congress, because we believe this is where it started. We believe Congress is the one that should correct it.

Whether Congress intended for it to be class legislation or not, it has ended up being class legislation, because they have provided these craft unions with 600,000 postal employees without benefit of the employees having anything to say as to whether or not they wanted the union to represent them under the Postal Reorganization Act.

I don't believe that was intended by Congress, and it certainly is not in keeping with any of the labor laws which have been going on in the country for the last 35 years.

Now, these are the things that we're concerned about and hope that this Congress will not look at this as a bill which the alliance has presented just for its own preservation, because we're going to survive regardless; whether it passes or not, but this is a bill which we believe is what this country stands for, that is freedom of choice and the right of American people to pick a representative of their own choice.

It's a shame when a person has to be told that you cannot go here to pick a representative because we're providing you with someone; whether the person is effective or not; whether he has your interest or not, seems to be of no concern; and we think it's wrong.

And as a black, and I know other minorities have suffered too long by having others attempting to speak for us, or claim to represent us when we know and history will show that they have not, and still are not representing the best interests of blacks and other minorities.

With that, I conclude.

Mr. WILSON. We have made efforts on more than one occasion to bring the American Postal Workers Union and the Alliance together. Mr. Clarence Mitchell who is the brother of Congressman Parren Mitchell was one who tried to help with the negotiations.

I had hoped we could have succeeded, but we were not able to resolve the problem; so unfortunately, it has lingered.

So, I have just one question, Mr. White.

You stated repeatedly in your testimony you wanted to play a role in the handling of your members' grievances.

Mr. R. WHITE. That I did.

Mr. WILSON. In view of that, would the Alliance be willing to accept a cooperative concept such as a system of joint representation for the employees' grievance proceedings in order to resolve this question?

Mr. R. WHITE. If you mean, Mr. Congressman, that we would not have to merge with any other union for the purpose of representing our postal employees, yes, we would accept it.

But we definitely are not interested in any type of merger with any other union.

We have been told by our conventions that they do not even want us to consider talking about merger; but anything that can be worked out where we can represent our members in grievances, adverse actions, whatever the definitions are, that we would be glad to try to work toward.

Mr. WILSON. Fine. Thank you very much.

You made reference to the letter from Senator McGee back in 1975. I think as long as a reference has been made to the letter, we should include in the record another paragraph from that letter which goes beyond what you indicated in your statement.

The letter says:

We endorse the amendment proposed by S. 1828 in that it has the effect of preserving the rights of postal service employees to be represented in certain important administrative proceedings by representatives of their choice.

Then in the next paragraph, and I'll read the whole paragraph:

However, when employees are permitted to be represented in grievance and adverse action proceedings by representatives other than their duly recognized bargaining representative, the possibility exists that grievances and adverse actions could be adjusted in a manner inconsistent with the negotiated agreement inasmuch as "outside" representatives have no incentive to make adjustments that are consistent with the agreement. This problem has been recognized in 29 U.S.C. s 159(a) (1970) of the Labor Management Relations Act, 1947, which prohibits adjustments of grievances in the private sector that are inconsistent with the agreement. We, therefore, suggest that the following wording be inserted on page 1, line 8, after the word "choosing," "as long as the adjustment of such grievance and adverse actions is not inconsistent with the terms of the agreement."

I felt that whole thing should be in there so that there are not misunderstandings.

Mr. R. WHITE. You will note that I followed up by stating that he did recommend some modifications in the language and also in title 39,

he recommended that the definition of grievance be inserted in there, so I am aware of the full content.

I just wanted to make it clear that he had no opposition to the bill, as such.

Mr. WILSON. Mr. Clay?

Mr. CLAY. Mr. White, I understand that many of your members are also members of the Postal Workers Union, which means they're paying dues to two organizations.

Would it be your opinion that the mere fact that they have chosen to pay dues to two organizations indicates that they believe your union can provide some services over and above what is being provided by the other union?

Mr. R. WHITE. Without a doubt, that would be our opinion.

Of course, we also ask many of them who we know to be dual members, we wonder why they are keeping memberships in the other, because we can provide all their needs.

But in view of the fact that they are carrying a dual membership, this certainly indicates to us that they believe the National Alliance is performing needed services and certainly performing a service for them that other unions are not performing, otherwise, it wouldn't be any reason to have it.

Mr. CLAY. What are some of the kinds of service the Alliance provides that the American Postal Workers Union does not provide?

Mr. R. WHITE. Without a doubt, the question of equal employment opportunity.

The majority of our members, as you know, are blacks or other minorities and, of course, the question of employment rights, promotional rights, all of these types of rights which blacks and other minorities have been denied throughout many years are types of things that we are more alert about; make sure they are getting proper representation as far as the union is concerned.

Now, many of them for some reason feel we are not capable of negotiating, you might say, around the table for wages and other types of conditions, which I take opposition to, but the mere fact that they are changing to the National Alliance means they feel we are providing that one necessary type of service which the other union is not providing.

That is we are representing them as minority employees in the postal Federal service.

Mr. CLAY. If the compromise Chairman Wilson spoke of were reached, would your union have the facilities or the ability to represent your membership from the beginning, all the way through arbitration?

Mr. R. WHITE. If it was necessary to go all the way to arbitration, we could handle arbitration the same as the other union is handling arbitration.

I think we have experts in the field of representing employees that is as well or as good or better than many other unions.

In fact, unfortunately, records will show that many of the representatives who were formerly with the national alliance, but after the Postal Reorganization Act passed, are now serving as stewards for other unions, and that was based on the fact that they did have some expertise which the craft union did not have available at that particular time.

So we do have the facilities, expertise, and funds—everything that is necessary—to represent anyone all the way up to arbitration if necessary; yes.

Mr. CLAY. Thank you. No further questions.

Mr. WILSON. Thank you, Mr. Clay.

Ms. Schroeder?

Mr. SCHROEDER. I welcome you here. I have an active Alliance group in Denver and I'm very proud of them and their dedication to the Postal Service.

One of the questions I want to ask is if Mr. Wilson's compromise were to come into effect, do you have any objection to the United Mexican-American group also wanting to represent their people at grievance proceedings and so forth?

Mr. R. WHITE. We will have no objection.

We feel, basically, that the Mexican-Americans have as much right to form a group to represent their people as we do, or any other particular ethnic group wanting to represent their people.

History will show that no one will represent a group of persons better than themselves, regardless as to whom you might try to turn over certain rights to.

Personally, we have learned through experience that no one can represent a black as well as a black can represent a black. Others have no possible way of knowing what we feel or how we feel or how we think about many issues and subjects and I believe the Mexican-Americans have that same basic right.

I certainly have no objection to working with them together in any kind of form.

Ms. SCHROEDER. I appreciate your answer because in Denver they have worked very much together and separately at the same time, very nice; no stepping on toes; yet I don't want to see them say that only the Alliance can represent all minorities, because I'm afraid that the United Mexican-American group might feel they had their toes stepped on.

Mr. WILSON. I'm afraid so, too, Ms. Schroeder.

Mr. R. WHITE. No.

You will note in our statement or portions, it is stated all along that we believe that the best union member is one who joins voluntarily, joins because they believe in what they belong to and believe they are getting proper representation.

We are not in any way bringing out anything in which we are trying to force people into the National Alliance or enforce people into paying dues. We just don't believe in it.

We've seen the ill effect of it in the private sector; certainly we don't believe it should be brought into the public sector. That is one reason I'm opposed to H.R. 56.

Ms. SCHROEDER. One other question I have.

In my district there's been a lot of trouble because the Postal Service has really almost had total lack of an affirmative action program.

My concern would be how to get input from the alliance and the United Mexican Americans into the major unions that when negotiation comes up there would be a much more affirmative action program. Have you any feelings about that nationwide?

Mr. R. WHITE. I cannot speak for the other unions as far as negotiating affirmative action programs into their agreement.

I think that the law requires that they put something into the agreement in regards to it and most of them merely put a statement to the effect that they believe in the affirmative action program.

But spelling it out as to the process to be used to bring about this, I can't speak for them, but as far as the national alliance is concerned, we have been more or less forced to use EEO as a method of representing our members.

We are not at all pleased with the affirmative action program; the way it is being protected, not only in the Postal Service, but in the Federal sector, because the Civil Service Commission, we do not feel, is playing the role it should play in making sure that these agencies really have an affirmative action program, and adhere to it.

We know of instances whereby the law requires that at certain stages certain action be taken on EEO complaints, and I think the Post Office has one of the worst records of any agency in not keeping up with the steps that are in the law which requires that certain action be taken within a certain number of days on any complaint of discrimination.

Of course, they use all types of subterfuge, reasons why they cannot handle it: Budgetary problems; don't have enough EEO counselors; or don't have enough EEO coordinators; and many other things. But, the law specifies certain action is to be taken.

We have brought this to the attention of the committees, brought it to the attention of the Civil Service Commission, but the only other way to get around it at the end of the 180 days, is to go to court; that's costly and I'm pretty sure they recognize we're not going to be going into court every other week.

So we need some pressure to really be brought on the Civil Service Commission to put some teeth into the EEO program and make it apply in the Postal Service, as well as to all other Federal agencies.

Mr. John White wants to make a comment, if you have no objection.

Mr. J. WHITE. Mr. Chairman and Congresswoman Schroeder, and others I feel are friends, in view of the fact that some derogatory remarks are continued about us in the statement of the American Postal Workers Union, I would like to recite one or two items briefly.

Twenty years ago, the distinguished leader of the APWU and our local, the president in Baltimore, Md.; he headed a lily-white union, I headed an all black one with no powers to membership, they could come if they wished to, but a part of that picture was the fact that at that time, women could make 99 on an examination and in an effort to enter the Postal Service, and a male could make a mere 70, the appointing official had the authority to select a man.

Nobody was yelling about that in the Postal Service, but us; and in a clash with the national leader who as local leader then said to me, and I say publicly and would tell him if he were here: "My union is opposed to women having jobs in the Postal Service." And I asked him why he said that.

He said, "They do not perform equal work for equal pay."

And in 1956 when women moved the mail, during the war years they had no tenure in their jobs; and we fought to succeed with Public Law 836 which permitted those women to come into the Post Office.

So, that is some of the background, and some of the particular concerns about representing people.

Thank you very much.

Mr. WILSON. Mr. Derwinski, I am very happy to have you here today.

Mr. DERWINSKI. Mr. White has devastatingly stopped H.R. 56; half of my job isn't necessary.

Mr. WILSON. Incidentally, somewhere along the line here I would like to ask Mr. Robert White or Mr. John White to be more specific about the alleged derogatory statement in the APWU statement. We've gone over it and we find nothing really derogatory.

They do make reference to you, make reference to the procedures that are followed, but it's difficult to find a derogatory remark in the statement.

If you would like to be specific about the derogatory statements we would be happy to consider them.

Mr. R. WHITE. Of course, Mr. Chairman, in my initial testimony, I did not use the terminology "derogatory".

Mr. WILSON. There is that reference.

Mr. R. WHITE. I stated they did use our name at least 18 different times and, of course, they slanted the statement to make it sound as though we were the culprits and we have done everything, gone everywhere, opposed to labor unions, opposed to everything that's worthwhile.

I just wanted to make it clear that in preparing our statement we avoided taking issue with other unions or telling about their history which we know it very well, and what they have done over the years. John just cited one example of some of the many things they have not done in representing people.

So, I would refrain from using the word "derogatory". They did make statements referring to the Alliance, which is their right to do so.

We have no objection to that.

Mr. WILSON. Mr. Brodhead?

Mr. BRODHEAD. Thank you, Mr. Chairman.

Are there agencies other than the Postal Service where your organization does represent employees with grievances?

Mr. R. WHITE. Are there any other agencies?

Mr. BRODHEAD. Yes.

Mr. R. WHITE. Yes. We represent employees in the VA, GSA, Commerce Department, HEW; at least those agencies right now; yes.

Mr. BRODHEAD. What system do you have there with respect grievances?

Mr. R. WHITE. In those instances that we're speaking of, we hold exclusive recognition on some units in these agencies, and of course, we are using our own grievance procedure which we negotiated during that time.

Mr. BRODHEAD. I see. So you do have contracts where you represent employees exclusively in certain units?

Mr. R. WHITE. That's correct.

Mr. BRODHEAD. So you nationally represent them on grievances as in everything else?

Mr. R. WHITE. That's correct.

Mr. BRODHEAD. Including wages and working conditions and everything else?

Mr. R. WHITE. That's correct, except wages.

Mr. BRODHEAD. Now, are there other instances, where you don't have contracts to represent people on grievances? If you do, how is it working out?

Mr. R. WHITE. I'll let my vice president who deals more in that field make a reply to that.

Mr. YOUNG. Well, in the Federal sector outside the Postal Service, the bargaining scope is very limited, as you know, no wages, hours, just personnel policies and practices.

So, basically, even in areas where you don't have exclusives, I think the Federal sector is only about 60 percent of the organizations.

So, therefore, in many other agencies they can go in and use the agency procedure or the Federal personnel manual so also in an appealable statutory act that other book, just use that procedure like adverse action, can't even negotiate in any act and represent the employees in an adverse action.

So the bargaining scope is very limited. So basically, and in areas where other unions have exclusives, you don't have contract negotiations.

The basis is no—

Mr. BRODHEAD. Is there no comparable situation within the Federal Government?

Mr. R. WHITE. Not to the extent that is in the Postal Service.

Mr. BRODHEAD. Right.

What about in the private sector; is there anything that you can point to in the private sector which is comparable to this situation?

Mr. YOUNG. Well, the private sector controls except they now have a special deal in California, controlled by the National Labor Relations which operates entirely exclusively.

If you're not an exclusive member, you have no standing as a minor-ity union.

Mr. BRODHEAD. There are not any instances are there where the Alliance represents people with respect to wages and hours?

Mr. R. WHITE. Not in the wages, no. The only area where employers or unions are negotiating for wages as far as the public sector is concerned is in the Post Office.

You can deal with other certain minor details like hours of duties, other types of minor working conditions, problems, but wages is exclusively to the Postal Service as far as the public sector is concerned.

Mr. BRODHEAD. I see.

What is the membership of the Alliance? How many members are there currently?

Mr. R. WHITE. We have about 35,000 members at the present time.

Mr. BRODHEAD. Historically, has the membership been greater or less?

Mr. R. WHITE. The membership I would say has been a little larger than it is now.

Our membership is increasing. For a while it took quite a down turn, but now it's back on the swing up and very, very close back to what we were a few years ago.

Mr. BRODHEAD. And to what do you attribute this increase of membership?

Mr. R. WHITE. Well, we think that there's a lot of dissatisfaction with the operation of the unions that are supposed to be representing employees in the Postal Service.

Basically, that must be it, because many of them are coming back into the Alliance. Whether they're maintaining membership in another union or not, I do not know, but they are coming back into the Alliance.

Mr. BRODHEAD. You know, Mr. White, all of us in Congress get complaints from constituents about various problems with Federal agencies and I must say that I have been surprised with the number of complaints that have come to me of racial and religious discrimination in the Postal Service.

I receive more about it than any other agency or department of the Federal Government. It's been a great amazement to me. I mean the numbers of people who come to my office and allege this sort of thing; and I must say, it has been quite a surprise to me.

You could probably count on the fingers on one hand the complaints I've had about other agencies, but there have just been numerous ones about the Postal Service. How do you account for this?

Mr. R. WHITE. Well, the Postal Service for many, many years has been the burial ground for many blacks and other minorities who have educational backgrounds and other types of skills which they have not been able to use.

They have not been able to get promoted, have not been able to work into the office, say off of the workroom floor, many things of this nature has happened to black and other minorities over the years.

In spite of any kind of a background that you may have, you could not get promoted. For a long time the Postal Service used strictly seniority, and then as soon as some blacks and other minorities gained enough seniority to be considered for jobs, they changed to another type of a system: The best qualified.

They have maneuvered for years and years to avoid giving proper consideration to blacks and minorities as Mr. White mentioned a while ago, other unions were never in favor of females coming into the Postal Service in the beginning.

So, as a result, they have not been in the service that long and are on the bottom of the seniority list and are not getting the consideration they should get.

So basically, in a way it points out what we have been saying all along, that people should be able to select someone to represent them who they feel have their interest at heart and not be thrown or forced into having to select or use someone as a representative just because an election is held.

In this case, not even held, based on the Postal Reorganization Act, but discrimination is very widespread in the post office.

The main reason you probably hear more about it in the postal department is because people are a little more union conscious in the Postal Service than I believe in the Federal sector, but there is plenty of it in the others, because we get our share of that. Every Federal agency in this country, practically, is full of discrimination.

Mr. YOUNG. I would like to make one comment that most politicians overlook.

The Postal Service is more politicalized now than before 1970 and what is happening on racial discrimination, religious, and sexual, these failures from the private sector that they're bringing in, these mismanagers that the Postal Service has coming in and not using any

type of promotional procedures, and they're bringing in their own people.

Some of the dedicated workers who have worked for the post office for years, female, and both blacks and other minorities are filing complaints.

This is what one of the major problems in the organization is that we see across the country. When mismanagers come in from the private sector and bring their own people in without following proper procedures, we've only changed from legislative politics to executive politics.

It's like when Mayor Daley was suggesting certain people for jobs, it's now coming from Washington. So we went from legislative politics to executive politics.

Mr. BRODHEAD. Thank you, Mr. White.

That's all I have, Mr. Chairman.

Mr. WILSON. Thank you, Mr. Brodhead.

Mr. Simon?

Mr. SIMON. You mentioned that some members are in both organizations. I'm just curious what your dues are and what other organization's dues are?

Mr. R. WHITE. I don't know, Congressman.

The dues are established by the locals. The national organization only establishes what they call a national per capita tax, and in every local throughout the country they establish their own dues based on the needs of the particular local.

Mr. SIMON. What would it average?

Mr. R. WHITE. Minimum dues basically for our locals would be \$3 per month; that is a minimum that we allow; must charge at least that. Most of them do charge more, though.

Mr. SIMON. I'm interested in the history of your organization; how and why it got started.

Mr. R. WHITE. Our organization has quite a history.

We started back in 1913 and it was started because of the fact that there were some black mailclerks about to be put out of service because of some improvements that have been brought about.

The story goes, and it is a true story, that the blacks were railway mailclerks that worked in old wooden mail cars right behind the engine.

Quite often in those days the trains would have accidents. Whenever there was an accident the old boxcars got smashed up; so it was a job which whites did not want.

So, when blacks came into the Postal Service; unfortunately, to get in they were relegated to jobs in these cars.

Well, around 1914 steel was invented; they started building steel cars. Also, the Postal Service increased their wages and so it became a little more attractive job.

The threat of losing your life or being injured was gone, wages became better, so all at once, many whites started coming back; wanted to get in the Postal Service. In the process, blacks were being threatened to be forced out.

These black postal employees went to the craft unions, without trying to name them, went to the union to try to get the union to represent them. The union would not represent them. The unions would not even admit them as members.

So, as a result, some 25 to 35 of these black employees throughout the country met at the foot of Lookout Mountain, Chattanooga, Tenn., and organized themselves into a group to represent their own interests and became then the National Alliance of Postal Employees in 1913.

Then about 10 years later, they opened up the membership. At that time it was exclusively railway mail carriers, then they opened it up so that any postal employee could join the National Alliance of Postal Employees and one thing I must point out, I like to always point out that the National Alliance at no time ever had any type of membership restriction or provision in its constitution, never denied membership to anyone, based on race, sex, or any other conditions which most of the unions had in their constitution up until 1960-61.

So, this is how and the reason for us organizing; most of the unions would not accept blacks and minorities as members all the way up to 1960, and as a result, most of the blacks who came into the Postal Service joined the National Alliance of Postal Employees.

There were some instances where there were letter carrier groups, that were referred to as Jim Crow letter carrier groups whereby blacks were permitted to have their own locals and the whites, theirs.

This existed quite all the way up to 1960, so we were forced into becoming an organization to represent our interest and we have maintained it.

Now we know it is necessary to keep this right, because some of the same conditions that prevailed in 1913, are conditions that we have seen since the postal reorganization come into effect.

Blacks now are being forced out in greater numbers; jobs have become more attractive; moving facilities into suburban areas, doing many things which we believe are obviously designed to eliminate many blacks out of the Postal Service, particularly in some of the major cities like Chicago, New York, Atlanta, Los Angeles, cities which had a great number of blacks working in the Postal Service.

That was the only decent job they could get, whether you had a college education or not. When they came out of college they couldn't go anywhere else except in the Postal Service and that's where blacks went and that's where they were buried.

Many of them spent their entire life working as clerks, or carrying mail in spite of the fact they had degrees and other types of skills which should have provided them with an opportunity to move up the ladder, but they were not provided that opportunity.

So, our role has constantly been a role of trying to make sure that the door of employment opportunity are provided to the best extent that we can to blacks and other minorities.

I always use the term blacks and other minorities because we do not restrict our activity in this area strictly to our membership, because we feel we have to represent everyone suffering from the same types of adverse actions, that we are suffering from.

Mr. SIMON. I thank you.

In view of your comments, particularly the gentleman on your left, this has nothing to do with the legislation immediately before us.

What would you think of legislation like our chairman has to get rid of the Board of Governors of the Postal Service.

Mr. R. WHITE. Let me have the legislative director respond to that. He's been dealing more or less in that.

Mr. J. WHITE. Well, we believe that we could function, and giving a bit of history, I know that in Baltimore shortly after President Kennedy gave the executive order recognizing the union that we had in Baltimore's elections, the Alliance, this group won the local election and two crafts.

So, we found ourselves in a position dealing with a general contract for all of the employees in the Baltimore Post Office, negotiating the general contract.

We all submitted proposals; management submitted proposals and the letter carriers, alliance mail handlers, everybody sat around the table and worked jointly; and we had no particular problem. There were issues which he insisted on.

I remember one in particular that the Alliance did place an equal opportunity proposal on the table and it was almost unbelievable to perceive that the managers agreed to our proposals which deal with equal employment opportunity, but the craft union opposed it.

But we believe that the proposal which I understood to the chairman to make in his opening remarks that if we had access to grievance procedures, postal employees who have confided in us and make a choice of us to represent them in spite of their ability to make a vote of exclusives, they want us to represent them; that we can live in this framework and not hope to get at the bargaining table except some day in the future if we prevail.

Mr. R. WHITE. Maybe Mr. Young can explain.

Mr. YOUNG. By the way, I worked for Congressman Simon when he attempted to become Governor of the State of Illinois.

Mr. SIMON. You're a brave man. [Laughter.]

Mr. YOUNG. Basically, I think the organization's position is that there have to be some modifications and I think Chairman Wilson is on the right track about bringing about the necessary changes, because as we travel across the country, get complaints in, if the Postal Service is going to accomplish its mission of providing more cost-efficient service to every citizen, there will have to be modifications, because of the Postal Service is under, as I said, these mismanagers who are running the Postal Service now.

It was bad when they took over, but it is completely devastated now, and I say that the Chairman's proposition is on the right track of trying to recover, regroup, the proposition of providing low cost, efficient service to all American citizens.

Mr. SIMON. Thank you. I have no further questions.

Mr. WILSON. Thank you, Mr. Simon.

Mr. White, there is an exception to your statement that the Postal Service is moving out to the suburbs and thereby making it difficult for minorities to find employment or to continue their employment, housing, and so forth.

The Inglewood, Calif., sectional center is now being built in a city in my district which is 95 percent black, instead of in Inglewood.

This is one exception to the rule which you discussed.

Mr. Derwinski, do you have any questions?

Mr. DERWINSKI. Mr. White, I wish to commend you for your strong standing on H.R. 56. Your reasons might be different than my reasons for opposing that bill, because in your case, H.R. 56, if passed, you'd be swallowed up completely in the process.

My reasons for opposing H.R. 56 are because I don't believe anyone should be forced to join a union to work for his Government. But nevertheless, I commend you for your stand, though your reasons weren't quite the same.

I also wish to commend you for utilizing the young gentleman on your right. He's a very effective representative of your union on Capitol Hill; has a lot of energy and does a good job covering the Hill for you.

Mr. R. WHITE. Thank you.

Mr. DERWINSKI. Your charges supporting this bill include criticism of how the two major unions, the Letter Carriers and the American Postal Workers Union represented employees of the Postal Service.

I've been a member of this committee for 16 years, and while I have had my differences with the Letter Carriers and the American Postal Workers Unions, I've had very, very few complaints from the postal employees that they were not well represented by those unions.

As a matter of fact, those unions have been very aggressive in looking after their employees, which is why such a high percentage of postal employees are union members.

Now, first for the record, how many members do you have in your alliance?

Mr. R. WHITE. About 35,000.

Mr. DERWINSKI. How many of the 35,000 are also members of either the Letter Carriers or the Postal Workers Union?

Mr. R. WHITE. I have no idea, no idea at all.

Mr. DERWINSKI. Well, I think you should, because the first question ought to be asked, if in fact, most of your 35,000 are also members of the Letter Carriers or Postal Workers Union, is it proper to saddle someone with dual or duplicating dues with only one of real practical benefit in representation?

I'm merely asking the question before we take this bill to the floor, that specific figure ought to be given us. Now, I hope I didn't misunderstand you in your answer to either Ms. Schroeder or Mr. Brodhead. You mentioned the fact that your basic responsibility was to look after the black employees of the Postal Service.

You almost came to the point of suggesting that only segregated unions can represent—you did say blacks had to represent blacks.

It is my understanding, and I think you said in your testimony that many of your shop stewards and key personnel have been absorbed by the Postal Workers Union and now effectively serve the membership of that group.

I'll let that subject be addressed by the spokesman for the appropriate union, but as I understand it, many of your former effective local leaders are, in fact, now holding positions of responsibility in either the Postal Workers Union or the Letter Carriers.

Mr. R. WHITE. Basically, Mr. Congressman, because they are being paid. Unfortunately, the National Alliance wasn't in a position to pay many of its stewards.

Of course, when they were taken into the other unions, and most of the reports that I have received is they were given some kind of remuneration as stewards.

Now, I did not, or tried to stay clear of the area of saying that we only represented black employees; that is not the case.

I might try to make it very, very clear that the National Alliance membership has been opened to every postal employee, any Federal employee.

Mr. DERWINSKI. All right. Of the 35,000 members, how many are nonblack?

Mr. R. WHITE. I cannot answer that. I have no way of knowing. It's not very many, I can assure you of that.

Mr. DERWINSKI. Let me get back to the point you made. You did say the reason for the existence of the Alliance was you had to have a black organization to represent blacks.

Now, if this is the case, you should have within the Postal Service Oriental organizations to represent Orientals in Chicago. You should have Polish unions to represent Polish members.

New York ought to have perhaps a basic Jewish group to represent the Jewish-Americans. You would have a splintering or polarization, wouldn't you?

Mr. R. WHITE. Not exactly.

You may find that what you have stated there may not be in terms of unions as such, but I am pretty sure that every ethnic group has a group, some type of organization of their own, even though they may be in these larger unions based on whatever reasons; they are being into them in some instances.

They do have their own organizations within this union, whereby they meet and discuss over individual problems. This applies to Polish, Jews, or anyone else.

One thing I would like to make clear, and very, very clear is that Polish, Jews, any group that you can think of can get together and work together and always come up being in opposition to blacks and other minorities because we are identified by our color and it stands out so clear that we can't get away from it.

These other groups, you can go into any post office in the country and find that you'll have Catholic, not only in race, you have religious groups, Catholic groups, Protestant groups, all of them are organized trying to bring about some interest in the people that they feel they are representing or their own ethnic group.

I know what is being said or has been said about having a lot of different organizations trying to represent people, that it proliferates or breaks down the possibility of being able to work efficiently.

Well, I don't necessarily agree that this is true. I think that is mostly union talk.

I think unions are interested in that, making everyone belong to their union, and I can see, I can visualize that in the beginning of the labor movement, it might have been necessary to make people a little more conscious of unions that they all would have to get together.

I think some of the laws that were passed some years ago which might have been effective then are not needed now.

I think people are aware of unions. I think people have become victims of unions basically to a great extent, and I say this not as antilabor language, at least not intended as such, other than to say that we know ourselves of the history of black people who have been forced into labor unions, have been paying dues in the labor unions and have not been properly represented. Many of them are in the courts now trying to get back pay.

MR. DERWINSKI. Let me ask you how many black employees now in the Postal Service of the 700,000 postal employees, how many to your knowledge are black?

MR. R. WHITE. I think the latest is somewhere around 21 or 22 percent.

MR. DERWINSKI. All right.

That would be 150,000.

MR. R. WHITE. Somewhere—I don't know; not that many.

MR. DERWINSKI. Your answer is that less than 25 percent of blacks are your members.

MR. R. WHITE. That's correct.

MR. DERWINSKI. One other point, and I don't want to get into the middle of a debate on unions, I'm not an expert on unionism.

MR. R. WHITE. Me either.

MR. DERWINSKI. I understand. Incidentally, being a member of the minority political party, I understand minority problems.

I still don't see how by splintering the postal employees, you can provide better service to individuals and collective groups of employees.

In other words, what you're advocating, if I understand your answer to Ms. Schroeder, you are not objecting to this bill being interpreted to provide equal status for the United Mexican Employees organization, which is based in Denver, and which I assume it might eventually spread through Texas, New Mexico, Arizona, and southern California.

The point made earlier, that you really want to have the authority that is now vested in the major unions.

MR. R. WHITE. Let me just ask, Mr. Congressman, why is it that in these other unions all headed by whites, what makes white people think they are the only ones that can represent people? This is our biggest objection.

MR. DERWINSKI. Just a minute. It is not going to help your cause when you exaggerate.

The reason I assume they are not headed by blacks or minorities is because they haven't had the votes.

They are covered by the Taft-Hartley; they have to go through legitimate election procedures, the rights that labor union members have, so evidently the leadership is acceptable to their members.

Because they're, in fact, elected and at the local level as well as the national level. I don't think you should quarrel with the democracy that exists there.

What chance would I have to be elected president of your Alliance if I were an active member of your Alliance?

I really shouldn't be elected, should I? I wouldn't be representative of the group, would I? Should I complain about it? Would I have minority rights?

You raise some questions that I'm not quite sure that in so doing, you're really justifying the bill in your support.

MR. R. WHITE. What we're talking about is a right of an American citizen, Mr. Congressman; talking about the right of anyone to choose a representative.

You spoke yourself about being a member of a minority party. How would you like to be told that just because the President of the United

States was a member of another party; that your constituents couldn't come to you for representation; you couldn't speak to them.

What has happened here seems to me is that unions have developed laws which in effect negate any type of competition, and I think that is where we have a big error in what has happened here.

Where a man cannot go anywhere else because the union put certain laws into the books which makes it impossible for you to go anywhere except to this union. That cuts down on competition from anyone.

It also provides for the union to do what it wants to do if it wants to do it for anyone. It does not make that union too effective in many instances.

They can tell a black or any other person that you can't go anywhere else; you have a problem, so what. We're not going to take it to negotiation, not going to take it to arbitration; all these types of things can happen.

The only thing that this bill is asking is that persons be provided with the right which is supposed to be in the Constitution, that being that they can go and get the best representation that they feel they need.

If it means getting an attorney, right now they can't get an attorney.

There is a case and it came out in one of the lawbooks very recently of a postal employee fired from his position. He used the union grievance procedure.

They assigned some representatives, some steward to represent this employee; the employee found out that the steward was not capable and was not properly equipped to represent him, and he tried to change to get an attorney to represent him, because his job was at stake.

He was told that he could not get an attorney; in the meantime, he had lost his job, he even went to court on the case, and the court even told him, said you lost your opportunity to select anyone else because you chose the grievance procedure, which was negotiated.

The employee in spite of the fact that he pointed out that the person who had been assigned to him was not equipped to represent him, the court added that had no bearing on the fact that he could not go anywhere based on these grievance procedures.

These are things I say that are wrong.

It wouldn't have mattered whether it had happened to a member of the Alliance, wouldn't matter if it were a Mexican-American or Jew, anyone; anyone should have a right to select their own representatives. That's all we're asking.

Mr. DERWINSKI. Thank you, Mr. Chairman.

I have gone farther than I should.

Mr. J. WHITE. I want to clear up one thing.

Mr. WILSON. We are anxious to move on, but go on.

Mr. YOUNG. No, I would just want to clear up a point for Mr. Derwinski, because I'm sure he believes in the principle of democracy, which is based on liberty, equality, majority rule to free election, protect the rights of minorities.

So, basically, all we're saying here is that give protection to the rights of minorities by giving them the opportunity to select representatives of their own choice.

Mr. DERWINSKI. You're legal counsel for the Alliance?

Mr. YOUNG. No; Just a representative from Chicago.

Mr. WILSON. He is the executive vice president; and he certainly knows what he's doing.

Mr. DERWINSKI. I understand that the Postal Union did file suit against the Postal Service challenging the grievance procedure of article 15, and that a unanimous decision of a three-judge, Federal panel ruled against you.

So you used the procedure which the law provides, and that's democracy.

To sum up, and I wish you well on your legislative efforts, but I wish you had not concentrated on injecting what are really political and emotional arguments.

We're going to have to make a decision based on law, facts, and administrative service, and the needs of the American public to be served by the Postal Service. It just seems to me that you'd better polish your arguments a bit better as you go along this legislative trail.

Mr. R. WHITE. Thank you, Mr. Chairman.

Mr. CLAY. Mr. White's argument that blacks are uniquely qualified to represent blacks may be emotional, but it's factual. I'm going to say this. Effective minority representation depends on the attitude, mentality, and dedication and concern for minority rights of those who make the decision; and equal opportunity is not on the list of priorities of any union in the post office except the Alliance.

Now, the decisionmakers of other unions have not placed equal opportunity on their list of priorities; therefore, it is my contention that there are many black people in the Postal Service who know that they need the Alliance to represent them in the case of the discrimination and unequal opportunity.

So, the argument is not a useless argument, it's well documented that blacks can only represent the interest of blacks.

Mr. WILSON. Thank you, Mr. Clay.

If there are not any other questions by the members of the committee, I want to thank you gentlemen for your appearance today.

Our next witness is Mr. Patrick J. Nilan, legislative director of the American Postal Workers Union.

I am pleased to introduce Mr. Nilan.

STATEMENT OF PATRICK J. NILAN, LEGISLATIVE DIRECTOR, AMERICAN POSTAL WORKERS UNION, ACCOMPANIED BY LEON HAWKINS, ADMINISTRATIVE VICE PRESIDENT; EDWARD BOWLEY, LEGISLATIVE AIDE; DANIEL B. JORDAN, COUNSEL; AND LORENZO STEPHENS, DIRECTOR OF HUMAN RELATIONS

Mr. NILAN. Mr. Filbey, our general president, had certainly hoped to be here this morning.

He went home Monday afternoon with a heavy cold and the flu and I received a call this morning that his doctor refuses to let him leave his bed or home to come down here; but he did regret not being here in order to discuss this important legislation with the committee.

Mr. Chairman, I am delighted to be here with my brother officers.

To my left is brother Leon Hawkins who is administrative vice president of the motor vehicle craft of our union; to my immediate left

is Mr. Edward Bowley, legislative aide; on my far right is our counsel, Mr. Dan Jordan; to my immediate right is Lorenzo Stephens, our director of human relations, originally from your home, Mr. Chairman, Louisiana.

Mr. WILSON. I just got moved.

[Laughter.]

Mr. NILAN. California; I'm sorry.

The reason I say Louisiana, Mr. Chairman, is we just got back from Louisiana and I didn't know if we would. Mr. Stephens is from your district in California.

We have a problem in that we developed a very detailed 18-page statement concerning particularly H.R. 5023, because we believe it strikes at basic trade unionism and the principal of grievance representatives which General Counsel Jordan did a lot of work on as did Mr. Bowley and myself and Mr. Filbey.

But knowing the time limitations we then prepared a summary which we had hoped to finish in 5 minutes, but I doubt quite candidly if I can, but I will make every effort to summarize to the extent I can. We would appreciate having our general statement on H.R. 56 included in the record as it is printed.

Mr. WILSON. Both of your statements will be entered in the record.

Mr. NILAN. The statement on H.R. 5023 included also the summary statement, Mr. Chairman, which I gave to counsel this morning.

On page 2 of our statement, I find it somewhat ironic that this committee has scheduled hearings today on two bills which would have exactly opposite results. We support H.R. 56 which, we believe, would lead to stability of labor relations in the Postal Service by allowing the postal unions to speak with some measure of security in dealing with the Postal Service.

Mr. Chairman, we discuss the original act of 1970 and the new system of bargaining that was placed into effect as a result of congressional action, and also we point out that it was meant, the intent—the law states and it provides for these things.

It made the provisions of the National Labor Relations Act applicable to the postal service and we have lived under it now for over 5 years.

We think we have made real progress in labor relations both in collective bargaining and in forging a grievance and arbitration procedure that really works.

At the top of page 3 of our summary we are talking about the grievances of the American Postal Workers Union. We presented 35,000 grievances on behalf of all the members and nonmembers of the union, black, white, female, male, regardless of ethnic background, race, color, or creed.

Now along comes H.R. 5023. This bill would alter the exclusive bargaining agent principle which is the cornerstone of labor relations in the private sector and since 1971 has also been in the Postal Service.

It would permit minority unions, private attorneys, Knights of Columbus, Columbians, Masons, veteran organizations et cetera, or any other person to represent employees in grievances and adverse actions, and to settle such grievances independently of the exclusive bargaining agent without having any responsibility in either, the negotiating processes which results in these procedures or funding of the procedure, itself.

We point out in the bottom of the page, Mr. Chairman, and I also want to make it clear for the record, we have no quarrel with our brothers and sisters in the National Alliance or in any other organization.

Our statement this morning was not intended to in any way embarrass or ridicule or make anyone a culprit; however, we believe the record must be set straight since this legislation is extremely critical, not only to all postal workers regardless of color or creed, but, of course, the present signatories to the national agreement with the Postal Service.

There is no question about it, the National Alliance—and we don't begrudge it being the principal sponsor of the legislation which is being considered this morning.

On page 4, the reason for the Alliance's 6-year battle to turn back the clock to the bad old days of postal employee and union impotence is simply that under the old system, the Alliance was permitted to take up grievances.

It was the weakness of that system, however, and the inability of postal workers to get meaningful grievance and adverse action settlements under it that was one of the principle causes of the 1970 postal strike.

The present bill is simply a reflection of the Alliance's inability to attract a sufficient number of supporters to petition the National Labor Relations Board to conduct an election in any bargaining unit large enough to be declared an appropriate one by the Board under its applicable guidelines.

Having failed to attract the allegiance of postal employees, the Alliance now asks Congress to bail it out by permitting it to play a role—a destructive and antilabor role—in the administration of postal labor agreements, and certainly would be 100 percent in conflict with the existing National Labor Relations Act as amended.

So, we do object to the bill.

Our national unions, Mr. Chairman and members of the committee, are to represent the interests of all members of the bargaining unit in good faith, whether or not they are members of our union.

The Alliance and its supporters have frequently charged us with violating that duty over the years without any success at all, because we have been sensitive to our obligations under that duty and have scrupulously and in good faith pursued grievances filed with us.

But there is absolutely nothing in this proposed bill, or in court decisions, to suggest that the same duty would be imposed by law on a minority representative.

Any employee who took his grievance to such a representative would be without a remedy if his representative failed to pursue his grievance for arbitrary, invidious, or hostile reasons or for any other reason. This factor alone is sufficient reason to reject the proposed bill.

The bill would open the door to turmoil and chaos by permitting the Alliance or any other minority union to manipulate its member grievances for their own political purposes.

It would be a premium on their not settling grievances on reasonable terms in order to show that they are more militant than the recognized unions.

It would inject new theories of contract interpretation in particular cases concocted by the Alliance which would conflict with our efforts.

to establish workable principles of contract administration; and we've got enough problems without another organization getting involved in contract interpretation.

There would be other problems as well. This bill would permit the exclusive union to be present at a grievance proceeding, but nothing in it requires that a settlement by a minority representative be consistent with the provisions of the collective bargaining agreement.

The minority union could simply ignore the contract and ride off in any direction it chose.

In our opinion, it would be almost impossible to have two different organizations trying to adjudicate or interpret the contract; and there would be thousands of unsolved grievances that could be thrown on the back of the postal union presently and/or in the future having bargaining recognition.

Finally, Mr. Chairman, it would be impossible to recognize all of the numerous objectives of H.R. 5023. However, I said it before and I'll say it today, say it tomorrow, merging all postal workers into one postal union including the alliance is the only realistic and workable solution.

The American Postal Workers Union is an industrial union and it takes members from any craft which we have within our bargaining units and certainly we will again welcome any response to reasonable merger between the alliance and the American Postal Workers Union and we believe the conditions could be worked out and we are available at any time to discuss this.

Finally, Mr. Chairman, we believe the law already contains a provision which adequately protects any individual employee or group of employees who feel impelled to go it alone in handling their own grievances.

Section 9(a) of the National Labor Relations Act permits them to present their grievances directly to their employer and to have them adjusted without the intervention of the bargaining agent so long as the bargaining agent is given the opportunity to be present and the adjustment arrived at is not inconsistent with the terms of the applicable collective bargaining agreement.

Mr. Chairman, before I conclude, I want to make one statement and that is insofar as black representation in our union is concerned, we made a study about 1½ years ago of the largest 25 unions throughout this country that represent nearly 100,000 of our members.

I don't remember the exact number of black presidents, men and women that are heading up these local unions, but if I recall, it was around 16 or 17.

Now, Mr. Chairman, to suggest that the membership of our union in our largest locals are not electing black persons, Chicano Americans or any other member of the union strictly on ability and a capability basis, we just cannot accept that suggestion in view of this record.

For example, in your own district, Mr. Chairman, we have had a black as president of the American Postal Workers Union local for more years than I can remember.

At the present time, we have a very fine, effective black president representing our membership as president in Inglewood, Calif.

This is true in Chicago, it's true in many of your large cities throughout the organization.

Thank you Mr. Chairman and members of the committee for permitting me to express these views of the American Postal Workers Union, AFL-CIO.

I am available for any questions concerning our statements and my oral presentation.

Mr. WILSON. Thank you, Mr. Nilan.

Would a compromise other than a merger to accommodate the National Alliance enabling them to be at the grievance proceedings really damage your position?

Mr. NILAN. Mr. Chairman, it would promote a splintering and compromising of collective bargaining and representation within the Postal Service.

The Alliance talks about discrimination. I believe you would discriminate if you selected only one organization to be representative of the interest of the large number of minority persons within the Postal Service.

The previous Alliance witnesses indicated no objection, but basically, our opposition would certainly be that it is divisive and would be a splintering tactic within the Postal Service. We could not agree, Mr. Chairman.

Mr. WILSON. Well, one other comment. You know, I was surprised and a little disturbed when a statement by your president came to my attention.

In your national magazine, Mr. Filbey had stated that Congress should not involve itself in legislation affecting the Postal Service. In effect, that's what was said.

Now, I introduced H.R. 55 and H.R. 56, as you know, at the request of the Postal Union, including your own union. He did not really mean that he doesn't want us to involve ourselves in legislation affecting the Postal Service, I guess. How inclusive was he being when he said that it should not disturb the Postal Service with legislation?

Mr. NILAN. Well, Mr. Chairman, as you know, the general president of our union, is very forthright in speaking out.

I did not see the article before it was published and there is no reason why I should, but in talking with President Filbey, there is no doubt in my mind that he did not intend to refer to the entire Congress.

We well know who our friends are here on the Hill and of course, many problems generated by the Alexander amendment to H.R. 8603 and some other maneuvers on postal legislation that have been going on up here has upset Mr. Filbey and me also.

Now, again, I can't respond directly to his thinking, because I was not privy to it in regard to the article, but I can assure you that it is not his intention to refer to all the 435 Members of the House and the 100 Members of the Senate, collectively when questioning certain unfavorable congressional action on Postal Service legislation.

We know we can't come up here on one hand seeking legislative action, an amendment or a bill of which is of particular interest to us and not also understand that other bills are not going to be considered by the Congress.

Mr. WILSON. Mr. Clay?

Mr. CLAY. Mr. Nilan, recently a labor report recommended that affirmative action under contract compliance be transferred from the

Postal Service to the GSA. Has your union conducted any studies to determine what impact that would have on minority employees or members of your union?

Mr. NILAN. Mr. Clay, this is not in my sphere of activity; I am not familiar with that subject—I do have Mr. Stephens here; also our counsel and I would suggest that one or both might be able to answer that for you.

Mr. STEPHENS. It is to what you say, however, this only relates to procurement. The EEO affirmative action situation as it relates to postal employees on the job situation is still under the Postal Service.

Mr. CLAY. But did your union attempt to establish what impact it would have on minority contractors who were attempting to negotiate contractors who were attempting to negotiate contracts with the Postal Service?

Mr. STEPHENS. I believe that prior to this situation coming up before that last contract was negotiated, we did have a long session with the U.S. Postal Service with regard to minority contractors, suppliers and what not.

Mr. CLAY. What was the result?

Mr. STEPHENS. The study was still going on at that particular time.

Mr. CLAY. Are there many minority contractors who are getting contracts with the Postal Service?

Mr. STEPHENS. I don't know that. I don't have an answer for that.

Mr. CLAY. Don't you think that with equal opportunity as one of your priorities, you would know whether or not minority contractors are benefiting in those millions of dollars that are being let by the Postal Service?

Mr. STEPHENS. You may be right there, sir; but our direct involvement in equal employment opportunity relates to people working in the post office, we have not gotten into the field with respect to the EEO situation as it applies to contractors and other procurement situations.

Mr. JORDAN. Congressman Clay, your question brings up one aspect of this bill and of our role and the role of the alliance that I think ought to be addressed and this is this.

There certainly is a role for the alliance or any other organization that's interested in the special interests of a racial group, ethnic group and the like. I would never claim anything to the contrary. What we're concerned with in this bill is collective bargaining, our role, the role of unions in collective bargaining process.

The role that we're—the thing that we're talking about here is whether a minority organization or an individual should be allowed to take a grievance under collective bargaining agreement in the National Labor Relations Act is a majority exclusive union, the exclusive right to bargain and take up grievances under it.

There are great advances to that system, which I am sure we can get a chance to address ourselves to.

What the alliance seeks in this particular bill is that it and every other individual of a minority group should be able to take up grievances in the workplace, relating to job oriented problems.

That we oppose, because we think it is a destructive thing to take groups as was suggested into a field; that would destroy the unity of the economic strength built up in connection with our bargaining with the Postal Service. This would weaken every postal worker collectively.

It does not mean that there isn't a local organization like the Alliance taking up problems of EEO separately. The present EEO provisions of the Postal Service have nothing to do with the collective bargaining agreement although there is a nondiscrimination clause within that.

They have a separate EEO practice; separate affirmative action; problems of supervisors; equality of opportunity for promotion among supervisors.

None of that has to do with our organization or any other union; but certainly for any alliance or any organization can become involved in that kind of activity. What we're dealing with here, is what we claim to be the destructive affect of this bill on the economic power of the postal workers vis-a-vis the employer.

Mr. CLAY. Would you say work conditions would be an aspect of the collective bargaining aspect?

If an organization is being discriminated against because of race, don't you think you ought to attempt to negotiate that collectively?

Mr. JORDAN. We do, indeed; not only negotiate, but have pursued many grievances involving claims of racial discrimination.

Mr. CLAY. I don't think that failure to pursue is the question. I think the charge is your failure to "vigorously" pursue.

Mr. JORDAN. Congressman Clay, let me say not only do we pursue it vigorously, to my knowledge, we pursue more so than the alliance.

The only case that I know where a true racial situation was pursued to a successful conclusion was in an arbitration conducted by the American Postal Workers Union by the late John Black who you probably know was murdered on the streets here in which he dug out a racial issue where nobody saw the racial issue, including the black grievant and pursued that case to arbitration on a racial theory and won it on that racial theory.

To my knowledge, that's the only one—including the cases taken up by the Alliance, where such a thing happened.

Mr. CLAY. Are you familiar with the number of charges of racial discrimination that have been made in the St. Louis Post Office, the district that I represent?

Mr. JORDAN. Indeed, I have.

Mr. CLAY. Would you think that this is an excessive amount of charges of racial discrimination being leveled against the St. Louis postal system?

Mr. JORDAN. The knowledge that I have of racial discrimination in the St. Louis area is that members of the Alliance and the Alliance, itself have charged that on a number of occasions that the American Postal Workers Union was not representing them in good faith.

As Mr. Nilan mentioned in his opening statement, our union and all are under the dual enforceable law to represent everybody faithfully and not to discriminate invigorously because of race or any other reason.

The Alliance has filed a number of charges with the National Labor Relations Board and all of them have been dismissed. They filed a number of lawsuits; all have been dismissed. To my knowledge, there is no such thing in St. Louis Post Office.

Mr. CLAY. There's no such what? Are you saying there is no discrimination?

Mr. JORDAN. Not by our union.

Mr. CLAY. Well, of course, I'm not accusing your union of discriminating. The postal system has the responsibility for eliminating racial discrimination.

Mr. JORDAN. I have no knowledge.

Mr. CLAY. What I'm accusing your union of is not vigorously pursuing the charges that have been leveled against the system.

Just recently I've received numerous complaints from black postal workers in St. Louis where there were recent promotions in a particular area and I don't recall the number, but it was in excess of 20; something like 24 supervisory promotions in a city of 42 percent black and not one of those supervisors was black.

I think you don't have to be specific; the pattern is there. And I want to know if your general membership was treated like that and thought they were discriminated against, your general member, would you be so concerned that you perhaps might even be talking about walking out of the postal system, going on strike?

Mr. STEPHENS. I could respond about the vigorous representation that the American Postal Workers Union renders in these areas.

Sure, we know that there's discrimination in the post office; we never deny that; but we vigorously pursue every situation that comes into the APWU about discrimination in the Postal Service.

We talk with headquarters in several offices. You may not be aware, but the American Postal Workers Union is actually the protector of blacks in many small offices where there is one, maybe two blacks in the post office.

When we find discrimination there, we move right in and get the situation cleared up. You've got Greenville, Miss., you've got a number of small offices where only one black, and you got a number of smaller offices where there is one female where they are being discriminated against.

American Postal Workers Union pursues these situations vigorously. APWU does protect every postal employee to the fullest extent of his ability, discrimination or what?

Mr. CLAY. Mr. Nilan?

Mr. NILAN. May I just make one comment.

Certainly there may be a situation in St. Louis, I know you're very familiar with that, but I would also like to suggest it's a matter of record within our purview that unfortunately, many, many times EEO complaints are filed because they refuse to use our grievance procedure.

Our grievance procedure is available for any violation of law, let alone EEO and we have got an excellent record in most of our largest cities whereby our black presidents, black officers, not white officers, are pursuing these vigorously.

I would like to know if you have certain instances where they were not pursued vigorously. I would appreciate a memorandum on it and I promise to get you an on-the-spot investigation by the national office of our union.

Mr. CLAY. Well, you'll get a memorandum to the effect that there have been hundreds of charges of discrimination by many members of your organization who have chosen to go through EEO rather than your organization.

Now, the question is why. That's the question. The question is why would they use that route rather than your organization? And they are members of your organization.

Mr. NILAN. Mr. Clay, this type of question obviously we can't respond to when you talk about hundreds who went this route, and are members of ours rather than going with our grievance procedure.

You're talking about St. Louis. We will be happy to attempt to see what the track record is on both grievance handling in regard to such complaints as well as EEO.

We'll try to find if we can whether it is APWU members, Alliance members, or nonmembers that are doing it.

The biggest problem in the major cities today, including St. Louis is the fact that we have this interbickering going on between one majority union and other smaller unions.

This is one of the biggest divisive tactics. Unfortunately, part of it is the majority of employees in an office don't belong to anyone; not the Alliance, they don't belong to APWU, they don't belong to anybody.

Yet, they do get grievance representation as required by law to the very best of our ability.

Mr. CLAY. That's a threat to unionism.

Mr. NILAN. Absolutely.

That's why we are so interested in trying to accomplish a merger with the Alliance—

Mr. CLAY. I don't know if merger is to be the answer. You heard Mr. White's testimony on that, but he did say he was willing to make some other kind of accommodation. Is there any kind of accommodation, some compromise that could be reached in this situation without a merger?

Mr. NILAN. Within congressional action, legal action, what are you suggesting?

Mr. CLAY. We're attempting to do it without congressional action.

Mr. NILAN. I know of no other way, Mr. Clay. I don't know of any other way we're going to be able to talk on this issue at all. I recognize it is very serious.

Mr. CLAY. As long as the talk is based around merger?

Mr. NILAN. On any issue looking at the alliance or any other organization which we may have a community interest.

Mr. CLAY. I asked Mr. White a question and I'm going to ask you the same one, and it's my final question.

Why do you think so many minority workers in the Postal Service are members of both the Alliance and your union?

Mr. NILAN. Mr. Chairman, I can respond to that because I don't think the situation has really changed materially over the years.

It has to a certain extent as to the Postal Act came in 1970. But when I came into the Postal Service in Minneapolis in 1941 the chairman of the membership committee was a black man who also was very active in the North Star branch of the Alliance.

He thought we only signed up whites, but we signed up blacks. He told the blacks when they came in to the Minneapolis Post Office, man or woman, to first sign up with the United Federation of Postal

Clerks Union. They'll take care of you and represent you in any matter. They are the organization that can do it.

Then if you have sufficient funds available to support the Alliance; naturally we want you to join us because we can help you in certain other ways.

I think what has happened, the average black person, an employee of the Postal Service recognizes during the last 3 or 4 years particularly, that the American Postal Union will represent them on grievances; has negotiated generally a good contract; and has provided the type of contract that they can live with.

It does protect them against arbitrary postal service actions whether they are related to reassignments or relocations or grievances. It is for this reason, the black employee or minority employee himself or herself has chosen that sort of APWU membership, identification, still recognizing that the Alliance performs other services which they feel they want to be a part of because of their black identification.

Let me say this, Mr. Chairman, in response to some of the comments that were made previously.

There is no doubt that in the Postal Service 10 or 15 years ago, all the way back there was a proper place for the Alliance to function within the postal service and Government, generally.

Mr. Chairman, we disagree this is true now as since 1960, 1963, starting with the President Jack Kenney Executive Order, there is no more reason for any organization other than those trade labor organizations that provide service and representation regardless of race, religion—

Mr. CLAY. Of course, you are limiting that to the postal system and not talking about the congressional Black Caucus in Congress? [Laughter.]

Mr. NILAN. Certainly not, Mr. Chairman.

Mr. WILSON. Ms. Schroeder?

Ms. SCHROEDER. Thank you, Mr. Chairman.

I really have great problems with your testimony and I think one thing you can say, from my background, is that I have never been anti-union.

I do not consider myself anti-union, but I must say taking potshots at those of us who are attempting to figure out what is wrong with the postal service is of no help to anyone. I would assume that your union knows that it's no great secret that there is a problem with morale in the postal service and you represent many of those people who are quite unhappy.

I must say that I am terribly frustrated; as a Member of Congress people come at you from all sides saying what are you going to do, things are falling apart, it is crumbling and I don't see any answer from your union except protect the status quo.

Now, this committee was kind enough to come to Denver last year and listen to protests of the United Mexican-American Postal Employee Organization and I mean there were unbelievable things, such as supervisors telling Mexican-American postal employees that if you have a college education, you should not have bothered because you should pick onions anyway, and so forth and so on.

I think everyone on this committee was rather appalled at how many people had grievances and the union tells me there's nothing wrong, they're being treated all right; we've looked into it.

What am I going to say? The Members of Congress thought it was awful; people keep coming back to the office and the union keeps saying there isn't anything wrong.

Now, one of the main issues I hear coming out of the Denver office is the possible reason that your union is not pursuing these problems. I am not only hearing this from the Mexican-Americans, I hear it from blacks, from women, hearing it from young people.

I mean I really feel like I'm running a counter union almost out of my office. It's all we can do to keep up with the phone calls. The way they say to becoming a supervisor is to get to become a union steward. They worked out this great understanding where you work as a union steward and don't pursue the grievances then you get to be a supervisor. I don't know if that's going on.

I try to talk to people, and people in my office and in your office and you all treat us like there's something wrong with us for asking the questions and maybe there isn't any fire there, but when you see that much smoke and the smoke keeps billowing out; it seems to me there must be something wrong.

As I say, I'm for unions, and no one has ever accused me of not being for unions. But there is something wrong and I guess I'm trying to pursue Mr. Clay's question.

Why do we have these problems with women and young people and it's not only them; we have even had young white males and old white males. It's everybody coming in and saying we're being sold out; no one is listening to us, and they're frustrated as all get out. Then they're starting to grab at me saying what are you going to do.

Well, you know as well as I that Members of Congress can't go in arguing grievances. We can't bring out the committee every week to Denver. What do you think we can do?

Mr. NILAN. Let me start off by saying this.

This is a little unusual situation because the president of the Denver local is black and they also have a significant number of other Chicano-Americans or black people as APWU officers and stewards in that office. I might mention whites may be also having problems that would bear out our point that black or white makes no difference.

That's point one.

Ms. SCHROEDER. I point out that the head of India is a woman and I don't approve of her civil rights, either.

[Applause.]

Ms. SCHROEDER. I can play games, too, but I don't want to play games.

Mr. NILAN. I was talking to my colleague, Mr. Bowley, our legislative aide, and unfortunately, with all the obvious complaints you are talking about, we five officers here who have no personal knowledge of any large uprising in Denver.

As a matter of fact, I don't know who they've been complaining to besides the Congressmen, including yourself, but I can assure you this much, they have not been complaining to us in Washington.

I will be out there in Colorado Springs for a statewide meeting in a few weeks and in view of your comments here this morning, I will go in a day early and try to meet with some of the people who should be knowledgeable regarding your complaints and try to find out in order to respond to your question.

I'm not familiar with it and among the five APWU officials here, we should be familiar with it if the situation is bad.

You see, we feel they should use the procedures available for complaints and grievances within our organization, first within our grievance procedure before they get involved with others concerning their unhappiness about what's happening.

Any large organization is going to have some unhappy people; but again, we don't have any direct knowledge of the changes made this morning.

I will say that we will be sure to investigate this; if you can give me the names of people or circumstances, you can give some outline of these complaints, we will follow up and we will return—

Ms. SCHROEDER. These things have been going on. I find it incredible that no one here heard of it.

Recently, my staff analyzed Civil Service Commission reports on equal opportunity programs within the Federal Government and the Postal Service was described as having perhaps the worst program in the Federal Government.

The only thing I can say is we just haven't had a very good response from the union. Instead, I see them attacking me for not supporting bigger and better subsidies and so forth and so on.

Until we can find out what has got everybody so terribly unhappy, I really feel we have to look for something constructive rather than saying you don't know how good it is; status quo, here we come.

Mr. NILAN. Ms. Schroeder, if you can give us some names, I assure you you will get a response.

Ms. SCHROEDER. I will give you more than you ever wanted to know about the Denver Postal Service.

Mr. NILAN. We look forward to it.

Mr. STEPHENS. May I say we have a national representative in Denver who is Mexican. He's a member of my field staff and your report to me of the problems in the Mexican American community there is the first I've ever heard of it.

Ms. SCHROEDER. Well, that may be the problem. Maybe your man out there just doesn't care, because that's what they tell us.

Mr. STEPHENS. Oh, he cares; he gets paid.

[Applause.]

Ms. SCHROEDER. The chairman of this subcommittee was there with us.

Mr. WILSON. I must support Mrs. Schroeder, Mr. Stephens.

It is difficult for me to believe that you have a Mexican American member of your national committee who is not aware of the problem existing with the Mexican Americans in the Denver Post Office.

We had a very vigorous hearing in Denver and there were some very valid concerns. I must say that, judging from those people who were making the complaints, I had no choice but to believe that the Postal Service has made some very, very bad choices for supervisors.

I had hoped that they would remedy it as a result of our hearings, but they did not. We received some assurance at the time that there would be some transfers made to relieve the sensitivity of the situation and assist in various problems that existed there.

For you to say that the Mexican American representatives are not aware of any unrest there, is very surprising. He should be aware of it.

Mr. NILAN. Is there a hearing report available of that hearing?

Mr. WILSON. Yes.

Mr. NILAN. Just for reference purposes.

Ms. SCHROEDER. In fact, it was on every television station and all over the newspapers for days. I don't know where he's been.

Mr. WILSON. We will make a report available to you and I think this is something that you should look into.

Mr. NILAN. Mr. Bowley would you like to respond for a moment.

Mr. BOWLEY. I attended the meeting out there with you, as you recall and it seems to me that the biggest complaint was the discrimination in promotions.

I think one of the primary ones wasn't against the union, but more—

Ms. SCHROEDER. No; I beg to differ. All of the testimony was about the people whose—

Mr. WILSON. We had two different ones. As a matter of fact, the hearing where you were, I think there we had not included the Mexican Americans.

Mr. BOWLEY. I'm sorry. I did not make the second one.

Mr. WILSON. Those other matters came up at that meeting, I agree.

Mr. NILAN. Let me just respond to the promotion question if I may. Of course the union is interested in all of its members as well as non-members under the Labor Relations Act of equal opportunity for promotion.

We think this should be, and anything we can do to enforce it, of course, we do; but on the other hand, understanding our labor contract, it does not give us the right to become involved in promotions within the Postal Service.

I know of no other labor practice or contract in the private sector or otherwise that provides that the unions be involved in promotions or have any responsibility for promotions.

While we have an interest, as I say in seeing that everyone is treated equally and has equal opportunity for promotions, that's as far as we can go.

This has been historically recognized as management's prerogative; but again, our people have the right to follow our grievance procedure. We will pursue it to the maximum extent we can.

Ms. SCHROEDER. And I understand your point on promotions fully. I'm just saying it was a grievance.

Mr. NILAN. Well, we're following this, I assure you.

Mr. WILSON. Do you have any other questions, Ms. Schroeder?

Ms. SCHROEDER. No.

Mr. WILSON. Mr. Brodhead?

Mr. BRODHEAD. Thank you, Mr. Chairman.

Mr. Nilan, Mr. White in his testimony a few moments ago gave an estimate of the percentage of minority employees in the Postal Service; 21 percent is the figure that he used.

What is your estimate?

Mr. NILAN. I, unfortunately, can't respond. I don't know. The Director of—

Mr. STEPHENS. Approximately 37 percent.

Mr. BRODHEAD. Thirty-seven percent of the employees of the Postal Service are black?

Mr. STEPHENS. No, no; minority.

Mr. BRODHEAD. Minority?

Mr. CLAY. Does that include women?

Mr. BRODHEAD. What is included in that minority?

Mr. STEPHENS. All minorities, I believe, except females, I don't believe.

Mr. BRODHEAD. Female is a majority. More than 50 percent of my constituents are female. I consider them a majority. I have to remember that when I vote. So you are saying approximately 37 percent. Now, the bulk of that would be black, wouldn't it?

Mr. STEPHENS. That's right.

Mr. BRODHEAD. What percentage of your union is minority?

Mr. STEPHENS. What percentage of the membership of my union is minority?

Mr. BRODHEAD. Yes.

Mr. STEPHENS. It would be difficult, but I would say it's in the neighborhood of 28 to 30 percent; and that does not include the female figure, again.

Mr. BRODHEAD. So you have a smaller percentage of minority members in your union than the post office, that is, the percentage of employees working for the post office.

How do you account for that difference?

Mr. NILAN. Mr. Brodhead, I was just talking to Mr. Bowley. I think that the statistics you are looking for we really can't give you.

We would seek information and make it available to the committee for the record, although the Postal Service, I'm sure, could provide perhaps that type of information.

We could give you some rough estimate of the minority membership within our union and I don't like to disagree with my colleague, but I do think it would be considerably higher, out of the 65,000 to 70,000 members we have, I would think that the minority representation there would be somewhere around 45 percent.

It's unfortunate that Dave Johnson is not with us today, the director of the organization, one of our fine black officers. Dave Johnson is a candidate to become the general executive vice president of our union in the current elections.

He may have the second most important job of our union; we have great trust in him. White and black officers alike support him for election to that position, including myself.

But we will try to get information from Dave Johnson's office; that's the best we can do.

Mr. BRODHEAD. I would appreciate it. If you can, get both a percentage of the minority employees within the postal department and also the percentage of minority employees who are members of unions.

Mr. NILAN. May I just make one point that might be interesting to you also in regard to figures? Usually they are very easily developed, but I was talking to Lorenzo Stephens a moment ago and some statements were made that only blacks can be represented by blacks. We've had elections where the National Alliance and the American Postal Workers Union have been competing organizations.

The overwhelming potential number of employees voting in that election were black, perhaps like 90 percent in the unit, and yet, the American Postal Union was selected as bargaining agent as against the Alliance and I think this does defeat the premise that APWU doesn't represent blacks.

Brother Bowley from the Washington D.C. local would like to talk about the membership.

Mr. BOWLEY. Mr. Chairman, if I might take 30 seconds, I know my colleagues are waiting to testify as well. I'd just like to give just a little background.

In 1958, Mr. Chairman, I walked out of a craft union because one of its problems that we had at the time was dual unionship, dual members.

We not only formed a local union in Washington, D.C., but a national union; and in less than a few years, and I might add that this union took in all members and I might add it was several years prior to the act; we were not forced or compelled to take them in, and it became a very large union.

In my home local in Washington, D.C., also the home local of a good friend, Bob White, the national president of the Alliance, going back 24 years, we worked very close.

In my union I started with no members, and I think the Alliance had maybe 2,000.

Today, in my judgment in Washington, D.C. with a good 90-percent black and maybe more, our APWU local has probably 3 to 1 in total membership over the Alliance.

It just points out to me that even in an area where there is a large minority group that when people try to make a concerted effort and work together, I think the best interest of all people can be served, and I happen to be very strong for a single postal union and not only with the Alliance, but with my brothers and sisters in the Letter Carriers.

I think that the best interests of all postal employees can be served through one single postal unit.

I would, other than that reason, oppose H.R. 5023 because I can see a dozen unions springing up overnight if this were to become law.

Mr. BRODHEAD. Mr. Chairman, just one more question.

I guess what concerns this committee are the allegations that Mr. White has made and is making and that other people have made about the lack of effective representation of minority workers in the Postal Service.

As I mentioned to Mr. White, I get a lot of complaints from people who are employees of the Postal Service about a lot of different things.

Certainly, if it has come to my attention, it can be no secret to you that there is a very serious morale problem in the Postal Service.

We just have an awful lot of people talking about discrimination; racial, religious, and all kinds of different things. As a person who represents a lot of working people, I'm very concerned about this and feel a responsibility to try to rectify the situation. I am very concerned about the charges that Mr. White is making.

Would you care to comment?

Mr. NILAN. The track record of APWU speaks for itself.

We have black officers, men and women, in most of the larger cities and not only because they're black, particularly, but they are union leaders.

Mr. BRODHEAD. I'm not talking about that. What I'm talking about is that there does appear to be an awful lot of dissatisfied people working for the Postal Service, more so than in the Government agencies and private industry.

I represent an area in which there are large numbers, for example, of United Auto Workers. I don't have people coming in saying you've got to do something about the United Auto Workers, they are not representing us. This doesn't happen.

But I get that from other places; that's what I'm addressing myself to, and that's what I'd like to have you comment on.

Mr. NILAN. I'll comment on two parts.

One part, of course, UAW, steelworkers, the rest of them have H.R. 56 as a matter of right by law that's union security for one thing.

Second, they have the right to strike, they are complete trade unions.

Unfortunately, postal workers, well, I will use the terminology, are a different sort of breed of cat in between the Federal sector and the private sector.

That's why we strove so hard to get equal types of bargaining rights, but on your second question, I think this is why many people in large numbers question it. I'm talking about our APWU membership.

I would estimate that 65 to 70 percent of our members start work at 4, 5, 6 o'clock in the afternoon and don't finish until 3, 4 o'clock in the morning.

Out of the group, probably thousands go into work at 2 or 3 o'clock in the morning, because that's the way the mail operation is handled.

So you've got right off the bat out of the 325,000 that we represent, you've got 200,000 that work under conditions totally different than practically any of their neighbors insofar as variety of work hours.

On top of that, 58 percent work Saturdays and Sundays. Most of them don't have 2 days off in a row; they get off on a Monday and Wednesday or Tuesday and Thursday.

Again, this is very destructive to particularly a young family, husband and wife, working mother, as the case may be.

What I'm trying to say is because of the working conditions, the hours of employment, the weekend work, all of these different things keep the membership in APWU very upset under such conditions until you get seniority, then you may get a Monday-Friday work-week, day hours, etc. Now some start at 5 a.m. and finish up at 1:30 p.m. These are some of the reasons by and large that are tearing them up.

Now, of course, if you ask them in regard to their economic conditions, the cost of living we've negotiated, the pay raises we've negotiated, 75 percent pay health benefits. One hundred percent pay life insurance, they are not unhappy about these benefits except in some of the larger inner cities where they should perhaps be doing better.

If you're talking about the economic conditions, no way, fairly happy about it; but going through the questions of relocation, reassignment because of postal or mail handling operations, then yes postal workers are unhappy and rightly so!

Historically, and one of the things we have difficulty getting across to our people is that we don't like these changes either because it adversely affects our people and their families.

But you can go into any industry in the country, and historically management has retained the right to determine how and when work is going to be performed.

The unions don't have the same rights. I wish to God we did. Perhaps there might be a little better operation in the Postal Service.

Regardless, we don't have these rights. These are the rights of Postal management as they are with General Motors, or any other big company in the country, but these are reasons that our people are constantly upset in the American Postal Workers Union and within other postal unions.

Well, Mr. Brodhead, I regret if I belabored the point.

Thank you for that, Mr. Chairman.

Mr. WILSON. Mr. Simon?

Mr. SIMON. I have no questions.

It just does seem to me that the very existence of the Alliance suggests that there are some problems. I think if I were an officer in your union—and when this meeting is over and the next time you get together—I would say in your closed meeting, how can we more effectively comply with these needs that obviously somehow people feel we are not meeting.

Mr. NILAN. May I just respond for one moment. We're not going to debate figures with our brothers and sisters of the Alliance. The best report we have regarding Alliance membership is somewhere around 10,000 postal workers.

Now, again, I say that's a subject of argument, but we base this rough estimate on dues checkoff and other evaluations; approximately 10,000 in the National Alliance. We represent totally 225,000 postal workers. Within that group, certainly 60, 70, maybe up to 100,000 minority people.

Mr. Simon, I suggest if we are not effectively representing minority persons, black men, black women, Mexican Americans, female, not representing them, they would not belong to our union when they voluntarily sign up.

They do not have to belong to our union under the law, but yet a tremendous, overwhelming percentage of postal workers are members of our union.

And since it is voluntary membership, we have to assume in balance that overall the American Postal Workers Union is effectively representing the overwhelming majority of the postal workers regardless of members or nonmembers.

Mr. WILSON. Thank you very much. We appreciate your being here and I think it's been helpful for you to have the opportunity to present your views once more on this very important subject.

I am including your statements in the record. I think your summary of the position of the court cases and the legal opinions are important, particularly.

Thank you very much.

[The complete statements follow:]

STATEMENT OF THE AMERICAN POSTAL WORKERS UNION (AFL-CIO),
CONCERNING H.R. 5023

SUMMARY OF POSITION

American Postal Workers Union, AFL-CIO, opposes H.R. 5023. This bill would amend the portion of the Postal Reorganization Act covering labor relations in the Postal Service (Chapter 12). Present provisions grant exclusive recognition to any labor organization selected by a majority of employees in an appropriate bargaining unit (sec. 1203). Such majority union is authorized to negotiate collective bargaining agreements and adopt grievance and arbitration procedures which it, as exclusive bargaining agent can administer (sec. 1206).

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H.R. 5023 would alter this principle of exclusivity which lies at the heart of the American system of labor relations and permit minority unions, attorneys, or any other person to represent employees in grievances and adverse actions and settle grievances independently of the exclusive bargaining agent. Although the bill does not say so, it is presumed that this representation would be within the framework of contracts negotiated by the exclusive unions and under grievance procedures devised by the exclusive bargaining agents. If a grievance is not settled by such minority representative, it would then become the responsibility of the exclusive bargaining agent to determine which unresolved grievances handled by the minority representative should go to arbitration and which should be abandoned. The exclusive union, of course, and not the minority representative, would have to bear the cost of such an arbitration.

The impetus for this legislation comes from the National Alliance of Postal and Federal Employees which, as we explain more fully below, has refused since 1970 to accept the Congressional judgment that postal labor relations, like labor relations in the private sector, will benefit from the application of the exclusive bargaining agent principle. The reason for the Alliance's six-year battle to turn back the clock to the bad old days of postal employee impotence is simply that under the old system the Alliance was permitted to take up grievances and through this medium was able to attract some members, obtain their dues, and perpetuate its officials in office. The system, however, did not benefit employees and, in fact, the inability to get meaningful grievance settlements was one of the causes of the 1970 postal strike.

The present bill is a reflection of the Alliance's inability to attract a sufficient number of adherents to petition the National Labor Relations Board to conduct an election in any bargaining unit large enough to be declared an appropriate unit by the Board under its applicable guidelines.

Having failed to attract the allegiance of postal employees, it nevertheless asks Congress to bail it out by permitting it to play a role—albeit a destructive and anti-labor role—in the administration of postal labor agreements negotiated by the national exclusive unions.

THE MAJORITY RULE PRINCIPLE LIES AT THE HEART OF LABOR RELATIONS IN THE UNITED STATES

The principle of majority rule has a long history in United States labor policy. It was promulgated by the National War Labor Board created by President Wilson in early 1918 to reduce labor strife during the first World War. It was carried forward by the Railway Labor Board (Decision No. 119) which was created by the Transportation Act of 1920 (Ch. 91, 41 Stat. at L. 456, 469) and found its way into the Railway Labor Act of 1926 (44 Stat. 577) and eventually into the Railway Labor Act amendments of 1934 (48 Stat. 1186).

Recognition of the union selected by the majority was embodied in Section 7 of the National Industrial Recovery Act of 1933 (48 Stat. 198). Implementing that Act, President Roosevelt created the National Labor Board with Senator Wagner as chairman which, by Executive Order, was given power to conduct employee representation elections by which majority unions were elected to act as sole bargaining agents. Later Congress gave legislative sanction to the Board (48 Stat. 1183).

Finally, the concept of exclusive representation by the majority union reached full bloom in the National Labor Relations Act itself (49 Stat. 449, 29 U.S.C., sec. 151 et seq.) where it has been carried forward ever since under the Taft-Hartley amendments to the Act (61 Stat. 136, 29 U.S.C. sec. 141 et seq.)

The doctrine has at its heart the objective of stabilizing labor relations. It requires that the employer must recognize and deal with the majority union and implies the corollary that he must not recognize or deal with any other union. It has been praised by both the Courts and experts in the field of labor relations as an effective way of achieving both stability and democracy in industry.

APPROVAL BY THE COURTS

Time and again the Courts have sustained the right of the majority union to exclusive control of both the bargaining procedure and the grievance mechanism set up in the contract.

In *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965) the Supreme Court said, "If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation 'would

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inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." (379 U.S. 650, 653).

Employees as individuals and minority unions have repeatedly been told by the courts that only the exclusive bargaining agent can institute arbitration under a collective bargaining agreement; e.g., *Black-Clawson v. Machinists*, 313 F. 2d 179 (2nd Cir. 1962).

In that case, the Court had this to say about the policy reasons for its conclusion (313 F. 2d at 186):

"Chaos would result if every disenchanted employee, every disturbed employee, and every employee who harbored a dislike for his employer, could harass both the union and the employer by processing grievances through the various steps of the grievance procedure and ultimately by bringing an action to compel arbitration in the face of clear contractual provisions intended to channel the enforcement remedy through the union."

And in another case:

"A union's right to screen grievances and to press only those it concludes should be pressed is a valuable right . . ." *Ostrosky v. United Steelworkers*, 171 F. Supp. 782, 790 (D.C. Md. 1959).

The Supreme Court has time and time again reiterated the significance and value of the exclusive representation principle as a cornerstone of stable labor relations in our system:

"National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours and working conditions . . . Thus, only the union may contract the employee's terms and conditions of employment, and provisions for processing his grievances; . . ." *NLRB v. Allis-Chalmers Manufacturing Company*, 388 U.S. 175, 180 (1967).

And in *Vaca v. Sipes*, 368 U.S. 171, 191 (1967) the Supreme Court explained the value of control of the grievance procedure by the majority representative.

"In providing for a grievance and arbitration procedure which gives the union discretion to supervise the grievance machinery and to invoke arbitration, the employer and the union contemplate that each will endeavor in good faith to settle the grievances short of arbitration. Through this settlement process, frivolous grievances are ended prior to the most costly and time-consuming step in the grievance procedures. Moreover, both sides are assured that similar complaints will be treated consistently, and major problem areas in the interpretation of the collective bargaining contract can be isolated and perhaps resolved. And finally, the settlement process furthers the interest of the union as statutory agent and coauthor of the bargaining agreement in representing the employees in the enforcement of that agreement."

The National Alliance of Postal and Federal Employees claims to be an organization with a special concern—the improvement of conditions of employees who are members of a radical minority and has suggested that this factor requires that it be given a dispensation from the normal rule of exclusivity. In its 1974 term, the Supreme Court dealt with this very contention and rejected it.

In *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50 (1975) it was contended that concerted activity directed against radical discrimination enjoys a "unique status" and that the National Labor Relations Act should be construed to accommodate the exclusive bargaining principle to the national policy of protecting action taken in opposition to racial discrimination from employer retaliation. Justice Thurgood Marshall writing for the Court rejected this concept. He had this to say about the propriety of a group of employees attempting to bargain separately to eliminate racial discrimination:

"Competing claims on the employer's ability to accommodate each group's demands, e.g., for reassignments and promotions to a limited number of positions, could only set one group against the other even if it is not the employer's intention to divide and overcome them. Having divided themselves, the minority employees will not be in position to advance their cause unless it be by recourse seriatim to economic coercion, which can only have the effect of further dividing them along racial or other lines."

And again on the destructive effects of such minority bargaining:

"With each group able to enforce its conflicting demands—the incumbent employees by resort to contractual processes and the minority employees by economic coercion—the probability of strife and deadlock, is high; the likelihood of making headway against discriminatory practices would be minimal."

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The Court pointed out that Congress had indeed shown its concern for discrimination in employment, and had provided ample means through legislative enactments such as Title VII of the Civil Rights Act to deal with it.

OPINIONS OF AUTHORITIES

Commentators have also explained why rival unions should not share in the processing of grievances. In a famous article on this subject, "Rights Under a Labor Agreement," 69 Harv. L. Rev. 600 (1956), Professor Archibald Cox wrote about the compelling policy reasons for denying rival unions access to the grievance and arbitration machinery, 69 Harv. L. Rev. 625-625:

First.—He points out that frequently the only party qualified to prosecute a particular claim under the contract is the majority union because it affects an entire group as a class as in the case of a subcontracting grievance.

Second.—He notes that often grievances arise from failure to foresee a problem at the time of contract negotiations. The appearance of grievances is simply a demonstration of the fact that further negotiation is needed. Thus, the interests of the group are affected to an extent that far outweighs the individual claims to damages. Grievance handling and negotiation thus become too intimately bound up together to permit divergence between the two functions. Unified control is a necessity.

Third.—Many grievance situations affect employees other than those who are directly involved and the union as representative of all, therefore, has an interest in the outcome of each such grievance settlement.

Fourth.—Vesting the union with exclusive control of the grievance machinery increases the likelihood of uniformity and thereby reduces a potential source of competitions and discriminations that could be destructive of the entire structure of labor relations in the workplace.

"To deny the majority representative power to control the presentation of grievances offers dissident groups who may belong to rival unions, the opportunity 'to press aggressively all manner of grievances, regardless of their merit, in an effort to squeeze the last drop of competitive advantage out of each grievance and to use the settlement even of the most trivial grievances as a vehicle to build up their own prestige. Imaginary grievances could be conjured up and others which, under ordinary circumstances would be dropped at the first step could be magnified out of all proportion to their importance. The settlement of grievances could become the source of friction and competition and a means for creating and perpetuating employee dissatisfaction instead of a method of eliminating it.'" 69 Harv. L. Rev. at 626.

Fifth.—Such competition between rival groups of employees adversely affects the employer, not only because of the resulting unrest, but because it deters the bargaining representative, who is now under serious political pressure from its rival, from taking responsible positions on the issues.

Sixth.—Frequently the filing of grievances is a symptom of group conflict within the bargaining agent itself and it should be free to work these problems out within its own house where all employees are free to gather under the one roof.

Another distinguished scholar also dealt with the issue of minority union grievance handling:

"The principal danger to be apprehended from permitting unrestricted choice of representation by the employees is the conflict which would arise should a union in rivalry with the representative be selected. The presence of antagonistic unions at a common conference table of itself breeds discord. Beyond this, it opens to the rival union the opportunity of exploiting grievances apart from their merits to show its superiority as a bargaining agent in the hope of ultimately displacing the representative. In self-defense the representative in its turn is required to support ill-founded grievances in order to prevent impairment of its prestige. As the conference table becomes a campaign forum at which the two unions vie with each other, the process of grievance adjustment loses its character as a responsible means of settling differences. The early experience of the National War Labor Board in directing 'the establishment of grievance procedure for minority unions for their members when no recognized or majority union existed' underscores the reality of the danger. The Board discontinued this practice, 'save in the most exceptional circumstances', because it found that '[f]requently the grievance procedure was used by one or more of the minority unions chiefly as an organizing device.'" Dunauf, *Employee Participation in the Grievance Aspect of Collective Bargaining*, 50 Col. L. Rev. 731, 753 (1950).

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MAJORITY UNIONS OWE A DUTY OF FAIR REPRESENTATION TO ALL EMPLOYEES
IN THE BARGAINING UNIT

In vesting majority representatives with the broad power to bargain on behalf of all bargaining unit members and to exclusively determine which grievances are presented to management, Congress, of course, did not authorize a tyranny of the majority over minority interests. (The National Labor Relations Act and the Postal Reorganization Act separately (39 U.S.C. 1202), each require that bargaining be confined to "appropriate units" which insures that the members of the unit have a "community of interest" in the bargain made on their behalf. The Landrum-Griffin Act (73 Stat. 519) insures that minority voices may be heard within the union itself and that it operate in a democratic manner.

Most importantly, the Supreme Court has held, in a long line of cases, that by the very nature of the exclusive bargaining representative's status as sole bargaining agent for a unit of employees, Congress implicitly imposed on it a duty fairly and in good faith to represent the interests of minorities within the unit. *Steele v Louisville & Nashville R.R. Co.*, 323 U.S. 192 (1944); *Syres v. Oil Workers International Union*, 350 U.S. 892 (1955); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1952); *Humphrey v. Moore*, 375 U.S. 335 (1964); *Vaca v. Sipes*, 386 U.S. 171 (1967).

The Alliance and its supporters have frequently availed themselves of the opportunity to charge the exclusive unions with such failure to represent in good faith, both with the NLRB and in private lawsuits. They have been uniformly unsuccessful because the exclusive unions have been sensitive to their obligations under that duty and have responded faithfully in handling grievances.

If the proposed legislation becomes law, however, there is absolutely nothing in either the proposed statute nor court decisions which would suggest that the minority union would have the same duty to individual grievants who entrust their grievances to a minority representative. Such employees would be without a remedy if the Alliance or other minority labor organizations failed to pursue a grievance for arbitrary, invidious or hostile reasons or because of membership or nonmembership of the grievant in the union. This factor alone is sufficient reason to reject this proposed amendment.

CONGRESS INTENDED THE EXCLUSIVE BARGAINING REPRESENTATIVE PRINCIPLE TO
APPLY TO POSTAL LABOR RELATION

Early in 1970 a serious postal strike occurred involving some 200,000 employees. Largely as a result of this strike, discussions in Congress and in the Executive Branch of government concerning postal reform quickened and a serious effort was made to legislate in the field. It was recognized by all that central to any scheme of postal reform was the problem of the antiquated, unfair and unworkable system of labor relations as it had been carried on under Executive Order 10988.

It was agreed that any reform measure would have to include a new scheme of labor relations and the general preference was for a plan that would enable postal labor relations to be conducted, as in the private sector, with bargaining conducted by exclusive bargaining agents for the full range of wages, hours and working conditions.

The Postal Reorganization Act, as finally passed, provided that the National Labor Relations Act would apply to postal labor relations at such time that the newly created Postal Service would declare it applicable, but not later than August 12, 1971. There was to be a transition period during which the then national exclusive unions would bargain with the Postmaster General for a first contract. In both the transition bargaining and when the NLRB became effective, representatives of the employees would be the exclusive representatives. In other words, the principle of exclusive representation by the majority union that had been in the National Labor Relations Act since 1935 was carried over into Chapter 12 of Title 39 U.S. Code as rewritten by the Postal Reorganization Act.

It was plain to the Alliance and other unions lacking majority status that this principle would result in their losing the limited bargaining rights they possessed and the right to represent postal employees in grievances and adverse actions which they had under the system in effect under the Executive Order.

They went to court to attempt to block the bargaining, claiming that PRA was unconstitutional because it directed the national exclusive unions to bargain for

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wages, hours and working conditions, but froze the Alliance out of the process entirely, including the handling of grievances and adverse actions. This claim was rejected.

Next the Alliance changed its position and amended its lawsuit to allege that Congress had intended all along for the Alliance to continue to take up grievances and adverse actions even though the exclusive unions did the bargaining. The court rejected this contention also, finding that Congressional intent was to grant to the national exclusive unions, during the transition period, the right of exclusive representation, including the right to handle grievances, under any first contract they might negotiate.

But the Alliance persisted. After the first collective bargaining agreement terminated and the transitional period ended, the Alliance attempted to prevent bargaining for a second contract. It filed unfair labor practice charges with the NLRB, which were dismissed. It then commenced a lawsuit against the Postal Service and the General Counsel of the NLRB to force him to proceed against the Postal Service for unfair labor practices. This suit, too, was thrown out.

Meanwhile the Alliance was unable to achieve the one thing that would have made it possible for it not only to take up grievances and adverse actions, but to bargain for contracts as well. It was unable, and has been consistently unable, to marshal enough support in a bargaining unit sufficiently large that the NLRB will conduct an election under unit guidelines it laid down in a case in which the Alliance and others had sought recognition rights in several different bargaining units, *United States Postal Service*, 208 NLRB No. 144 (1974).

Thus, at every turn the Alliance has attempted to block collective bargaining rather than fostering it. It has played dog-in-the manger without regard to the best interests of postal employees who it says it represents.

Now comes a bill sponsored by it which would achieve by legislation that which it has not been able to achieve either by court action or by its own organizing efforts among the mass of postal employees.

THE PRESENT BILL WOULD SERIOUSLY JEOPARDIZE STABILITY OF POSTAL LABOR RELATIONS

It is not at all clear what HR 5023 intends to say. Would it permit a minority representative to take up grievances and adverse actions only under the substantive provisions of the contracts negotiated by the exclusive union or could it go beyond that? In the event a grievance is not settled by the minority representative, how is arbitration invoked, by whom? If it is by the exclusive union, what procedure would be used to involve the exclusive representative? At what stage? Would the exclusive union have to attempt to settle the grievance itself *de novo* before seeking arbitration? How could it account for the thousands of grievances that would be tossed into its lap at any of the four steps of the grievance procedure? The proposed bill permits the bargaining representative "to be present" during the grievance handling by the minority representative, but does not preclude the latter from resolving the grievance in a manner inconsistent with or directly opposed to the collective bargaining agreement or the policy of the bargaining representative. These are only a few of the questions that come to mind when this proposal is examined.

Why is this proposal necessary at all? There is not the slightest evidence that the exclusive unions are not handling grievances adequately. On the contrary, over the period of five and a half years, since the first collective agreement with the Postal Service, they have built up an expertise in grievance handling that has enabled them to deal with some 82,000 grievances. Only the national exclusive unions have sufficiently large staffs to cope with this avalanche of work, the sophistication to analyze, process and coordinate the complex questions of contract interpretation arising daily and the facilities to achieve some kind of systemization, and uniformity of approach to questions arising under the contract from more than 30,745 post offices.

Even if these practical questions could be resolved satisfactorily there are compelling reasons why the present bill is ill advised. It would seriously impair stability of postal labor relations for reasons suggested by the commentators previously mentioned. It would open the door to turmoil by permitting the Alliance and any other minority union to manipulate their members' grievances for their own political purposes; it would put a premium on their not settling grievances on reasonable terms in order to show that they are more militant than the recognized unions; it would inject new theories of contract interpretation in particular cases concocted by the Alliance that would conflict with the efforts of the recognized unions to established workable principles of contract

interpretation, particularly as to those contract clauses which are hotly disputed between the Postal Service and the Unions.

This would, indeed, be a high price to pay simply to bail out an organization which is unable or unwilling to make the necessary effort to gain sufficient support to compete in free elections under the NLRB's auspices.

Moreover, the National Labor Relations Act, as it presently applies to the Postal Service, contains this provision which should be adequate to protect any individual employee or group of employees who feel impelled to go it alone in handling their own grievances.

"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."

STATEMENT OF THE AMERICAN POSTAL WORKERS UNION (AFL-CIO), CONCERNING
H.R. 56

Mr. Chairman and Members of the Committee, for the record, I am Patrick J. Nilan, Legislative Director of the American Postal Workers Union (AFL-CIO). I am very pleased to appear before the Committee this morning with our General President Francis S. Filbey and Legislative Aide Edward L. Bowley. We previously testified on H.R. 56 on March 13, 1975 and at this time are presenting a similar statement again in support of enacting H.R. 56.

We speak in behalf of more than 350,000 postal employees for whom we are the Exclusive National Representative for labor-management relations and collective bargaining with the U.S. Postal Service.

We thank the Chairman and Members of this Subcommittee for giving the American Postal Workers Union an opportunity to express our views on H.R. 56. We appear here today to advise this committee of our support for the pending legislation H.R. 56 which has been introduced by the distinguished chairman of this committee, the Honorable Charles H. Wilson of California. H.R. 56 proposes workers the right to negotiate union security with their employer.

The time has come to mow down the misconceptions that have grown like weeds around this simple issue of union security.

The plain facts are being suffocated by an overgrowth of propaganda.

In the process the public has been confused and the unions frustrated by emotional sloganeering and a mixed bag of scare talk.

The convening of the 94th Congress provides a logical time and the right forum in which to start setting the record straight.

It is logical and right because it is here and now that the postal unions intend to press with all their vigor for an amendment to the Postal Reorganization Act of 1970 permitting us to negotiate union security contracts with the U.S. Postal Service.

That proviso, of course, was included in the original version of the bill as reported by the House Post Office and Civil Service Committee in May of 1970. It was knocked out of the bill, unfortunately and unwisely in our judgment, when the House considered the bill a month later.

As Legislative Director of the American Postal Workers Union, AFL-CIO, it is not my purpose to re-hash that legislative misjudgment. Rather, I would like to clear up, if I may, the misconceptions which for too long have confused the issue in too many minds. In this effort, I am supported by unanimous mandate of our last national convention which listed the right to strike and union security as our "paramount legislative demands."

To a trade unionist the term "union shop" has meanings that are not perhaps fully understood by others because it reflects a point of view that is not always obvious to the general public. Thus it has been relatively easy for Labor's enemies to misrepresent the purpose of a union shop contract.

One example can be found in the testimony before Congressman Wilson's House Subcommittee on Postal Facilities, Mail and Labor Management in the Spring

of 1973 when opposing points of view on this subject were most recently aired on Capitol Hill. The record shows that much of the testimony conjured up visions of compulsory union membership as a wholesale threat to the constitutional rights of postal employees.

Specifically, the Executive Vice President of the National Right to Work Committee—an inflammatory title and mis-named body if ever I heard of one—stated that the bill then under consideration, H.R. 5312, would authorize compulsory union membership. The philosophy upon which the bill is based assumed, he said, “That unlike every other private organization in our society, unions are so unattractive that they can become strong and effective only by conscripting supporters. The very fact that such a proposal as H.R. 5312 is even considered, is, in itself, an indictment of the attractiveness and usefulness of postal unions under their present leadership.”

Other arguments in a similar vein were advanced against the bill. It was alleged that postal employees would be forced to join a union as a condition of employment and that by doing so, the employees would be subordinating their individual rights to those of the union.

It was further alleged that the union shop and the agency shop are handmaidens of tyranny by the union “majority” over the protesting and unwilling “minority” and that this tyranny would compel postal employees to turn over money for purposes with which the “involuntary dues-payer” may disagree.

The employee is thereby forced to pay his money to a union which he believes is (1) useless, ineffective, or even detrimental in representing his interests, (2) promoting causes and ideologies with which he disagrees, or (3) supporting a political party of a particular candidate to whom he is opposed.

I fully expect these old bugabocs to be hauled out again by the right-to-work advocates and I would like to suggest, in advance, that the propagandists do a little more homework.

In the first place, we have no intention of preventing anyone from working while his co-workers go out on strike or to deny anyone his right to compete on the job or to win promotion rights and higher pay. We emphatically do not advocate denying any employee his freedom of speech, press or assembly or the full freedoms of this religious beliefs. Nor would we force any employee to support political parties or programs against his will. To imply otherwise is damn nonsense.

In the second place, we want our adversaries to examine the safeguards that have been written into the National Labor Relations Act by Congress as well as by judicial interpretation that would protect the rights and privileges of postal workers in the event we are successful in repealing that section of the Postal Reorganization Act which prohibits agency or union shop contracts.

This section provides that “an employee of the Postal Service has the right to join or refrain from joining a labor organization and that the employee will be protected in the exercise of this right.” By striking this provision from the Postal Reorganization Act, the applicable law would then become the National Labor Relations Act. Its provisions do not require employees to join a union as a condition of employment. Instead, they provide that:

The union must be elected by a majority of the employees in an election by secret ballot or otherwise be selected by equally valid techniques;

The union must then persuade the employer at the bargaining table that a union shop agreement is desirable;

The periodic dues and initiation fees collectable under the agreement may not be excessive or discriminatory under any circumstances (and these are subject to judicial review);

Employees denied rights within the union for any reason, political, racial, religious, or personal are exempted from the contractual requirement that they pay the union dues; and

A majority of the affected employees may vote in an NLRB election by secret ballot to rescind the union-shop agreement.

With these safeguards and limitations the doomsday pronouncements of the right-to-work advocates sound ridiculous if not absurd.

We certainly recognize that there is a large body of opinion in this country which opposes the union or agency shop both in the public and the private sectors. The House of Representatives, for example, rejected that clause of the Postal Reorganization Act in 1970 by a vote of 226 to 159. But most of the debate on the issue reflected the attitudes and prejudices typified in much of the right-to-work rhetoric.

There are also right-to-work laws in 19 of our fifty states; and there is a certain counterfeit appeal to some of the right-to-work arguments if viewed in absolute terms. There appears, for example, to be an inherent contradiction between a worker's individual rights and his obligations under a union or agency shop arrangement.

At first glance, it seems to be logical that no man should be "forced" to join a union in order to obtain employment; or that no man should be required, as a condition of employment, to surrender part of his earnings to a union—a "private organization"—in which he has no interest and which he does not wish to support.

It may even appear plausible that a conflict can arise in cases where a union might pursue policies or support points of view which an individual employee cannot accept. Our opponents stress that nowhere else in our society is a "private organization" given the power to impose its will on those who do not voluntarily wish to associate with it.

But in the trade union movement, as in most of the world in which we live, the factors which shape or govern our lives cannot be viewed in absolute terms. In the labor movement, as in most human endeavor, it is necessary to surrender some of our individual options to the interests of the group.

A football player who made a big deal about his individuality in team play would have a short career. If corporate executives refused to subordinate their personal interests, convenience, comforts and privileges to the interest of the company, there would be few executives and little industry. The essence of organization is teamwork and there can be no teamwork without some sacrifice of individuality. We do this in practically every daily activity from driving to work to living together as a family.

Few of these activities are more important than the process of raising the standard of living of the working public and of protecting the economic rights of this public against unrestrained encroachments by industry and management. In a free enterprise economy, there is no institution but the trade unions which can adequately and properly pursue these two functions, both of which are of major importance in our lives.

Because of the importance of the functions and the unique character of the trade unions, government has come to recognize and accept that trade unions are not just another "private organization." Their function is of such urgent importance to the public welfare that they have been accorded a special status by society and by the government.

In this process the labor movement has not been permitted to seek the betterment only of its membership; it has been obliged to secure the benefits and privileges of an improved standard of living for the entire working public, whether or not it belongs to a union.

Some of these obligations are written into law and apply directly to the question of the union or agency shop. It would be absurd to suggest, for example, that the benefits of a union contract with management should be confined to union members only.

Not only would such an arrangement create crippling dissension within a shop or an industry, it would give rise to endless litigation on grounds of economic discrimination and to an impossible tangle of bureaucratic red-tape that would make such dual personnel and administrative management utterly impossible.

Labor has always worked to improve the condition of workers whether or not they are union members. This has meant that the economic burden falls largely upon the union members. It is hardly surprising, therefore, and certainly understandable, that the labor movement has attempted to spread this burden to other workers who share and enjoy the benefits of a trade union movement but choose not to share its obligations or its expense.

We do not ask for legislation to force the union or the agency shop on hapless employees. We are asking for the removal of legislation that prevents us from negotiating such arrangements as part of our contract with management. This is a far cry from compulsory unionism.

Only when a union has acquired, through the secret ballot and under the auspices of the NLRB, the right of exclusive bargaining agent for a group of workers would it be possible to undertake such negotiations and even then, the union shop is not a foregone conclusion.

Those who would deny the union or agency shop to postal workers would deny to the postal unions the two basic tools which the labor movement has used to help bring this nation out of the era of the sweat shop and the 12-hour day.

These tools are (1) financial strength—without which it would be impossible to carry forward the programs and activities essential to our objectives, and (2) the right to strike and the union shop—without which we lack the elements which give us equality with the power of management at the bargaining table. Both are equally essential to the protection of the rights of postal workers and to the enhancement of their welfare in a democratic society.

In the so-called private sector such procedures are commonplace. But Congress has kept our union—and all the postal unions—in a second class status that is neither “fish nor fowl”. It has given us the right to organize and the right to bargain collectively. But it has denied us the rights which are basic to free unionism.

So, I submit, it is not unreasonable for us as a union to seek from Congress—and to get—the right to negotiate with our employer for the establishment of procedures to levy and receive appropriate financial contributions from all who share in the benefits we have won for our crafts.

The old concept that somehow federal workers are different from employees in the private sector is no longer valid, if it ever was.

There is no merit to the argument that without alternative means of mail delivery the public interest cannot tolerate mail strikes. There are no alternatives to making steel when the steel workers strike. There are no alternatives to making autos when the auto workers strike. Who is to say that one is more important than the other in terms of the national economy?

The fact is that strong unions enjoying reasonable equality with management are the greatest bulwark against strikes by employees in our society. There is no greater incentive for management to achieve agreements with Labor than Management's awareness of this fact. Conversely, the laws against strikes by public workers have not prevented and cannot prevent public strikes.

The postal unions want the same equality that other workers enjoy. They want the right to pursue a union shop and the right to strike. In this day and age, nothing less will suffice.

Thank you Mr. Chairman and the Members of the Committee for permitting us to present the views of the American Postal Workers Union in support of H.R. 56 to grant postal workers the opportunity to negotiate “union security” with our employer, the United States Postal Service.

Mr. WILSON. We're now going to have the representatives from the National Association of Letter Carriers.

You have no prepared statement, but you have comments and are prepared to answer questions.

I understand that Mr. Rademacher is not well so Mr. Vacca will represent NALC.

STATEMENT OF J. JOSEPH VACCA, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS, ACCOMPANIED BY JEROME WALDIE, ADMINISTRATIVE ASSISTANT TO THE PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. VACCA. I am Joseph Vacca, executive vice president of the National Association of Letter Carriers, and with me is Mr. Jerome Waldie, administrative assistant to the president.

Mr. WILSON. We welcome both of you gentlemen here.

Mr. VACCA. Thank you, Mr. Chairman.

First of all, I want to express President Rademacher's deep concern for not being here this morning. He is ill with the flu as are many people in the Capital.

Jerry Waldie is one of your former colleagues, and I shall, at the proper time, ask Jerry to make a few comments with reference to this bill.

Mr. Chairman, I first of all want to commend you for holding these hearings on such sensitive, controversial issues. It takes great courage to call together people with views and differences as strong as those

who are here today. It is chairmen like you who allow such people to come to express their views that should be commended.

Mr. WILSON. Thank you.

Mr. VACCA. At the outset, I would like to say that the National Association of Letter Carriers doesn't have an ax to grind with any organization, whether exclusive or otherwise, and we feel that the organization who is sponsoring H.R. 5023 is doing so out of necessity, and perhaps if we were not the exclusive organization, we would be doing the same thing; however, that does not make it right.

With reference to H.R. 56 and as you know, Mr. Chairman, we did not submit a written statement. We are going to allow you to continue to look at our position from that testimony that we provided for you at the previous hearing in 1973 and hearings thereafter. But in H.R. 56, this whole country is based on the fact of paying a fair share for benefits derived.

The subject of H.R. 56 is not different. If you want to be a citizen of this United States, you have to obey rules and its laws and have to pay taxes. In other words, your fair share.

I'm not so sure that some people always pay their fair share, but the Ways and Means Committee will take care of that, I assume.

However, I think that the union is the same thing. It just is not fair for people not to belong to an organization and reap the same benefits as those who are paying a full share of the bill or to gain those benefits and get away scot-free.

There is no difference with persons who want to drive a vehicle in this country. If they are to benefit from the good roads and freeways and fine roads that the States provide and the Government provides, they are taxed every year for riding that vehicle on those roads and obtaining those benefits. That's not unlike unionism. To get the same benefits that everybody else gets, everybody should pay their equal share to get those benefits.

With reference to H.R. 5023, we oppose that legislation. We oppose it because it flies in the face of the National Labor Relations Act which provides that employees and bargaining units have a right to choose the organization that shall represent them.

It works in the private industry, and it will work and is working in the Postal Service since we are also covered by the National Labor Relations Act.

I would say passage of this legislation would be tantamount to the President of the United States being elected by the majority of the people then Congress passing a law allowing his opponent to be a part-time president and that is just not the way this country is run; the majority rules. Representation is spelled out under the National Labor Relations Act, and we don't believe that should be splintered.

At this time, I would like for former Congressman Waldie to give his views as he has sat in these committee chambers before listening to testimony on these same and similar types of legislation.

Mr. WILSON. Mr. Waldie.

Mr. WALDIE. Mr. Chairman, members of the committee, I sat and listened today from a different perspective than I have in the past, but not with a much different attitude and that is an understanding and a sympathy with what Mr. White particularly was saying.

As I'm sure have all of you on the committee, I, too, have been enormously impressed with Mr. White's capacity to represent the people that he speaks for and I found no reason to recede from that assessment today.

What I'm saying, I think, has to be understood in terms and in light of the history of the Alliance, though he purposely did not dwell on that, and it was only alluded to casually.

I think, nonetheless, a recognition of the reason for the Alliance coming into existence is necessary to better understand precisely what Mr. White was trying to say to Congress today. That is obviously because at the time his organization came into existence and for unhappily much of its life, there was nowhere else for the black employee of the Postal Service to turn for assistance in resolving grievances with his employer.

Indeed, I suspect that during a good portion of that time there were equal grievances he or she had with the union leadership as well as the employer, none of which were properly addressed and I suspect it is very difficult given that history and particularly given the black experience in this country, and experience from which I cannot comment because I've not participated in it, but knowing somewhat of that experience and knowing particularly the experience of the black alliance, I'm sure it's very difficult for certain black employees of the Postal Service to believe that they can receive adequate and proper representation from any other organization than the Alliance that has historically understood their problems and expressed concerns and implemented those concerns to the best of their capacity.

So I think that this attempt in this legislation is an attempt on the part of Mr. White and the Alliance to place into legislation their belief that there is not available an organization or vehicle sufficiently sensitive to the problems that they experience, that the representation they seek can be obtained.

I understand and I sympathize with that and I am moved by it, though I do not remain persuaded that this is the remedy to this problem.

Whatever remedy is adopted, that problem will probably continue to exist. I think this remedy does not really address that problem, because in my view it creates other difficulties and other mischief that in some sense may make their difficulties greater in having a proper response to their concerns really brought about.

I wish I could tell the committee what I personally or what this union personally believes is the solution. I suspect it's somewhere in the area of comments that have been made by the number of members of the committee; that is, something short of legislation an increased sensitivity, perhaps, an increased awareness on the part of the existing unions of the problems that the Alliance is seeking to address, and perhaps the ability in the Alliance to have increased confidence that there is within the existing unions the capacity to respond to those problems better than has been the case in the past.

I can only suggest that the problem Mr. White addressed is quite concrete and deserving a solution. It is my personal conviction and the conviction of this union that the remedy that he proposes by 5023 would not in fact meet the problems that he experiences, but would create greater and more mischievous problems than I think presently exist.

So, I would hope that the committee, though not in any way denying the validity of the concerns that Mr. White and the Alliance have expressed, and not in any way denigrating those concerns, would seek a solution other than that proposed in H.R. 5023.

Mr. WILSON. Thank you very much. Let me ask you the same question I asked APWU.

Do you feel that, other than merger, you could compromise and accommodate the Alliance by enabling them to have a role in the handling of grievances? Would it really damage your union?

Mr. VACCA. Mr. Chairman, the benefactor of such a compromise would be management, because the more splintered the organizations get, the more whipsawed the organizations are by management.

There would be absolutely no benefit, I don't believe, to the Alliance nor the exclusive organizations if that compromise comes about.

Mr. WILSON. Do you feel it's a possibility to work out any compromise that would not damage your own union's position?

Mr. VACCA. We would be opposed to such compromise based on what I said just a moment ago.

Mr. WILSON. Mr. Brodhead?

Mr. BRODHEAD. Thank you. We have a quorum call and I have another meeting to get to. I just want to thank you, gentlemen, for being here and helping me shed some light on this. I thought Mr. Waldie's statement, particularly, eloquently outlined what the problem is.

Do you have those figures? First of all, how many people are members of your union?

Mr. VACCA. 235,000.

Mr. BRODHEAD. And do you have any idea what percentage of that is minority or black?

Mr. VACCA. I have no idea at this time. I'm sure we could probably accumulate such figures. It would take a great deal of time to do so.

Mr. BRODHEAD. There's no sense in going to great lengths over this. I'm trying to get an idea of what the dimensions of the problem are. Are you talking about closer to 10 percent of the minority in your union or closer to 90 percent. About where is it? Give us a ballpark figure which we won't hold you to.

Mr. VACCA. Congressman Brodhead, I wouldn't even attempt a figure, because it is a very difficult figure to put together as far as I'm concerned.

Mr. BRODHEAD. More than half or less than half?

Mr. VACCA. Since our applications do not have any blanks for race, creed, or color—

Mr. BRODHEAD. I see. Would you say more than half or less than half?

Mr. VACCA. I wouldn't even venture a guess. I'm not trying to evade the question, Congressman, I don't know.

Mr. BRODHEAD. Thanks very much. I do have to leave, but I appreciate your taking time to be here. Thank you, Mr. Chairman.

Mr. WILSON. Mr. Clay, do you have any questions?

Mr. CLAY. The question I have is for my colleague, Jerry Waldie.

Mr. Waldie, you were in Congress when the Postal Reorganization Act was passed, is that correct?

Mr. WALDIE. Yes; I was.

Mr. CLAY. And you were a member of the House Post Office and Civil Service Committee?

Mr. WALDIE. Yes.

Mr. CLAY. Do you think that it was the intent of Congress when that bill was passed to deny the National Alliance the right to represent its members?

Mr. WALDIE. Well, while I was listening to the testimony earlier, I was trying to search my recollection on that very issue and it's imperfect; as near as I can recall, I happen to have been in support of the Alliance's position then.

My recollection, very frankly, is that the Alliance's position, however, was not accepted by the committee and the committee understood the consequences of not accepting that position.

So, I'd have to say the intent of Congress, as I recall, was for the committee not to permit the Alliance to have preferential positioning in terms of attaining the right of representation.

Mr. CLAY. Wasn't it crystal clear during that transitional period that the Alliance would have the right to represent its membership?

Mr. WALDIE. Well, the only thing I can say and I don't mean to sound evasive, my recollection is really not clear. I recall the issue most clearly evolving around check-off. The Alliance sought the right of check-off of dues in order to maintain its existence and I would assume therefore, its ability to represent and my recollection was that the right of check-off was granted them. I don't know that that's so.

Mr. CLAY. Does your recollection tell you that during the debate it was pointed out that the Alliance should have the right to exist until elections were declared and—

Mr. WALDIE. I think I have no question that that was the case.

Mr. CLAY. But no found situation where no elections have been declared and the Alliance is being forced out of existence by the mere fact that they can represent their membership?

Mr. WALDIE. I don't have any response to that, Mr. Clay.

Mr. CLAY. But it is your recollection that the intention of this Congress was—

Mr. WALDIE. My recollection is that the intention of Congress was to give them the same right that all other organizations had to attain a position of exclusive representation: whether that vehicle to obtain that status was election or not, I don't recall, though my personal belief is it was, because I did not know any other way to attain that sort of recognition.

Mr. CLAY. Thank you. I have no further question.

Mr. WILSON. Thank you very much. Thank you gentlemen, we appreciate you being with us.

Mr. VACCA. Mr. Chairman, there was a question asked earlier I think I ought to address. I think Congressman Clay asked the question and I think I ought to address myself to it and that is the use of EEO procedures as priority.

No one has a monopoly of EEO use of procedures and a good labor union steward has the EEO procedures along with the unfair labor practice procedures, along with the grievance procedures in his bag of tools to use.

I personally have filed all three procedures on the same grievances which is a possibility; so you use everything possible to represent your people in the manner that they should be represented.

Mr. CLAY. Thank you.

Mr. WILSON. Thank you, Mr. Vacca.

[The statement which follows was received for inclusion in the record:]

NATIONAL ASSOCIATION OF LETTER CARRIERS,
Washington, D.C., February 13, 1976.

HON. CHARLES H. WILSON,
Subcommittee on Postal Facilities, Mail and Labor Management, Committee on
Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN WILSON: Because of ill health on the date of your recent hearings on H.R. 5023, I was unable to participate. Unless the record has been closed and unless you do not agree, it would be appreciated if you would insert my testimony at the point of appearance of the NALC witnesses.

Your cooperation and continued interest in the welfare of all Government workers is greatly appreciated.

Very truly yours,

JAMES H. RADEMACHER, *President.*

STATEMENT OF JAMES H. RADEMACHER

I wish to comment briefly on H.R. 5023, through which the National Alliance of Postal and Federal Employees once again seeks its own self-aggrandizement at the expense of the public interest in genuine collective bargaining in the Postal Service. You will recall that when Congress passed the Postal Reorganization Act, it decided that the system of collective bargaining, as understood and practiced in the private sector, is indispensable to sound labor relations in the Postal Service. That meant that only an exclusive bargaining agent, that is, a representative selected by a majority of employees in an appropriate unit, could negotiate and administer contracts covering terms and conditions of employment with the Postal Service.

This majority rule principle, which is the essence of collective bargaining, necessarily supercedes pre-collective bargaining practice, under which, even though employees are represented by a so-called exclusive bargaining agent, other unions and even unqualified laymen and lawyers unfamiliar with labor relations, are allowed to represent them in adverse actions and grievance adjustment.

When the Postal Reorganization Act was considered, the Alliance contended that inasmuch as it did not hold exclusive bargaining agent status, majority rule, coupled with a proposed Congressional finding that only national craft units are appropriate, would amount to a legislative death sentence against it. The Alliance pleaded for opportunity to demonstrate substantial support in industrial units less than nationwide in scope and, upon such a showing, to persuade the NLRB that such units are appropriate.

Congress granted its plea. However, after enactment, instead of acquiring substantial support in any conceivably appropriate unit, the Alliance launched repeated attacks in the courts upon the constitutionality of the Act and upon the NLRB's refusal to render an unauthorized advisory opinion as to which, if any, smaller than nationwide units are appropriate.

Now that its efforts to frustrate and distort Congress' enacted policy have failed (see *National Alliance of Postal and Federal Employees v. Klassen and National Association of Letter Carriers*, AFL-CIO, 514 F. 2d 189 (CA DC), cert. denied, December 16, 1975, 44 L.W. 3359; *National Postal Union v. Blount*, 341 F. Supp. 370 (D.D.C.), aff'd sub nom. *National Association of Letter Carriers AFL-CIO v. National Alliance of Postal and Federal Employees*, 409 U.S. 808 and *United States Postal Service*, 208 NLRB 948), the Alliance returns to Congress with a plea to obliterate majority rule in contract administration. That, as every informed student of the subject is aware, would substitute chaos for collective bargaining in the Postal Service.

The NALC cannot conceive that this entirely unprincipled attack upon the public interest warrants serious considerations by your Committee. However, if assistance is desired in evaluating any arguments which may be presented in its favor, we shall be glad to provide it through our General Counsel, Mr. Mozart G. Ratner.

Mr. WILSON. We're going to have Mr. LaPenta as our next witness.

I might say that I'm terribly sorry and I want to apologize for running out of time. We'll be happy, in fairness to other witnesses to schedule them another day, say on Monday, February 23. At that hearing you could have more time for presenting testimony.

Mr. LaPenta?

Mr. LaPenta. Mr. Chairman, I want to read my statement into the record. I purposely kept it within the bounds, and I assure you that it won't take me more than 5 minutes to read it.

Mr. Wilson. Fine.

Mr. LaPenta. Mr. Chairman and members of the committee, I am representing General President Angelo Fosco of the Laborers' International Union of North America, AFL-CIO.

We represent 550,000 workers in a number of industries in the private sector and 100,00 workers in the Federal, public and Postal Service. Our union supports H.R. 56. It removes from title 39, United States Code, subsection (c) of section 1209.

While the Postal Reorganization Act was being considered by the Congress, the labor-management section became the cornerstone for the acceptance of three other basic provisions that make up the Postal Reorganization Act.

Together the four are: (1) the capitalization of the U.S. Postal Service, up to \$10 billion; (2) continuity of management; (3) independent Postal Rate Commission; and (4) modern labor-management machinery to bring postal labor relations within the same structure that exists in the private sector.

At that time, Congress declared "no single need is more insistent than for the reform of the labor-management structure."

What happened actually was a reneging on the promise of full collective bargaining for postal workers and when the National Labor Relations Act provisions were included in the Postal Reorganization Act two important provisions were denied postal workers: (1) the right to strike; and (2) the right to negotiate a union security provision in their collective bargaining agreement. H.R. 56 redeems that broken promise.

By striking 1209(c) of title 39, United States Code, the law will revert to those rights set forth in the National Labor Relations Act, made applicable to the U.S. Postal Service by section 1209(c) of title 39, United States Code. Specifically, it will make applicable sections 7, 8, (a) (s) and 14(b).

Section 7 sets forth the rights of employees to join or refrain from joining a labor organization subject to the provisions of section 8 (a) (3).

Section 8(a) (3) sets forth the terms and conditions under which a union security agreement can be negotiated.

Section 14(b) provides that a union security agreement can be prohibited by State law.

It is patently unfair, while the Congress is bailing out Bailar and the Postal Rate Commission if you do not give postal workers back this bargaining right. It is unjust to weaken their bargaining structure.

Let me take a moment to give you the following important historical perspective. Individual employee rights are nonexistent in the United States today and that's why right-to-work propaganda about defending and protecting the 78 percent who are unorganized is baloney and a bag of dirty tricks.

What is described as labor law is restricted to relations between employers and organized employees or employees attempting to organize. Today only 22 percent of the total labor force are members of any union.

The labor law therefore has very little relevance to the day-to-day worklife of the majority of employers in the United States. There is no statutory protection for the job rights of the ordinary employee. There is no common law protection of job tenure unless the employee has contractual protection.

The courts hold each worker is an employee at will. Employers, without collective bargaining agreements have been free of legal restraints in their right to treat employees in any manner they please.

In upholding the constitutionality of the National Labor Relations Act and the Supreme Court said:

The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The act permits a discharge for any reason other than union activity.

Again, in upholding the majority rule concept of that statute, the Court said:

The employer, except as restricted by the collective agreement itself and except that he must engage in no unfair labor practice or discrimination, is free to select those he will employ or discharge.

As for the National Labor Relations Board, it has been flooded with tens of thousands of cases involving discharges in retaliation for union activity. The former Chairman, Frank McCulloch of the NLRB, several years ago used the term "crime wave" to describe the flagrant violation of the National Labor Relations Act.

The Thompson subcommittee of the House Education and Labor Committee states:

There is evidence that the administrative and judicial delay in processing these cases vitiates any effective redress.

This is no different than cases involving discrimination because of race, religion, sex, or age, where the employer is making an object lesson for the rest of the employees and therefore, union rights should be strengthened by law.

Furthermore, contrasted with the dependence of the employee on his union for his subsistence is the size of the modern corporate employer. The gross revenues of General Motors and Standard Oil of New Jersey each far exceed those of any single State. As for arbitration, the body of arbitral laws is unduly lenient on employers. The decisions by any large show great deference to management prerogative.

Turning to the constitution a claim that a job was a property right protected against an unjust employer was rejected by an appeals court. In summing up, little or no protection of workers' job rights have been recognized in this country in and by statute, common law, the constitution, NLRA and arbitral law. If that's not enough, let me further shock the honorable Members of Congress.

The International Labor Organization, a body made up of representatives of government, industry, and labor made a survey several years ago of 76 countries who were members. In every country except the United States, virtually every employee has job protection by law or constitutional right.

And, Mr. Chairman, as you have been informed in previous hearings on H.R. 55 a companion bill on the right to strike only the United States and Russia deny that right to segment(s) of workers. The détente is working. Mr. Chairman, I submit it is unfair of Congress to deprive 600,000 postal workers of their entitlement to all the provisions of the National Labor Relations Act: (1) The right to organize; (2) the right to certification; (3) the right to collective bargaining; (4) the right to an exclusive grievance—arbitration procedure; (5) the right to negotiate union seniority in their collective bargaining agreement; and (6) the right to strike if a collective bargaining impasse occurs.

The opponents to H.R. 56 have been successful in depriving postal workers of No. 5, the right to negotiate union security, and No. 6, the limited right to strike over collective bargaining impasse. They are now also seeking to deprive postal workers of No. 2, the right of exclusive certification and No. 4, the right to an exclusive grievance arbitration procedure.

This will happen if you approve H.R. 5023 which should be rejected on its merits; however, it also raises in my mind how anyone can adopt the dead doctrine of "separate but equal" which is precisely what H.R. 5023 provides.

Since the United States provides the most limited protection of its workers, right-to-work statutes should be repealed and the Right-to-Work Committee's deceptive lobbying should be condemned and made unlawful. They cannot guarantee any rights; they cannot guarantee any work.

Don't take my word for it. The Iowa State Supreme Court held:

The Iowa Right-to-Work law does not change the status of plaintiffs as employees at will who could be discharged at anytime for any reason.

Mr. Chairman, that concludes my statement. I respectfully request you favorably report H.R. 56 without amendments.

There is one final thing I would like to submit for the record; Federal Court Judge Richey's discovery order which deals with the suit brought against the legal committee of the Right-to-Work Foundation, and I think that that order of Judge Richey is very revealing. It in effect says the organization is a phony front for employers.

Mr. WILSON. You certainly have been very plain spoken in your statement and there's no doubt about what you said, Mr. LaPenta.

Without objection, we'll include the paper which you submitted for the record.

[The discovery order follows:]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

(Civil Action 839-73)

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA, INC., ET AL., PLAINTIFFS;

v.

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,
ET AL., DEFENDANTS

[Filed January 26, 1976, James E. Davey, Clerk]

ORDER

In the Memorandum Opinion and Order of December 19, 1975, this Court ordered the defendants to comply with this Court's Order of June 5, 1974, con-

cerning "Set Number II of Interrogatories by Plaintiffs to Defendants." In the December 29th Order, this Court held plaintiffs' motion for Rule 37 sanctions sub judice pending compliance by the defendants with the June 5th Order. This Court modified the June 5th Order on January 15, 1976, and in so doing, ordered the defendants to comply with the June 5th Order on or before the close of business on or before January 19, 1976. The defendants to this date have not complied with the Orders of this Court, and the Court finds defendants' non-compliance to be willful. Therefore, the Court will grant plaintiffs' motion for Rule 37(b)(2)(A) sanctions, and the "matters regarding" the Orders of the Court shall be deemed to be established. In this regard, the Court will take as established all of those facts which, without the list of contributors, it would be unjust and unfair to require the plaintiffs to prove. This is dictated by both Rule 37 itself and principles of due process. See *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 351, 29 S.Ct. 370, 380 (1909).

On the basis of the foregoing, it is, by the Court, this 26th day of January, 1976,

Ordered, That the plaintiffs' motion for Rule 37 sanctions be, and the same hereby is, granted; and it is

Further ordered, That it shall be deemed taken as established for the purposes of this action that among financial contributors to the defendant Foundation are a substantial number of employers who (1) have contracts or other relationships with some of the plaintiff unions herein; (2) are in the same lines of business in which some of the plaintiff unions herein engage in organization; (3) have union security agreements of their own whose validity or operation may be affected by suits which the defendant Foundation is supporting; (4) have contributed to the anti-union activities of the defendant Committee; and (5) have in other ways manifested their opposition to organized labor; and it is

Further ordered, That the facts alleged in paragraphs ten (10) and twelve (12) of the amended complaint shall be taken as established for purposes of this litigation; and it is

Further ordered, That it shall be taken as established for purposes of this litigation that the "financial contributors" designated in the second ordered paragraph above have contributed monies to the defendant Foundation and that said monies have been given by the Foundation to the plaintiffs in the lawsuits set forth in paragraph ten (10) of the amended complaint for the purposes of financing and encouraging said litigation, and that said "financial contributors" are employers who have a concrete interest and would be affected by the aforesaid law suits set forth in paragraph ten (10) of the amended complaint; and it is

Further ordered, That upon proof of compliance with the Orders of the Court of June 5, 1974; December 19, 1975; and January 15, 1976, this Court will consider a motion to vacate this Order; and it is

Further ordered, That the defendants shall appear before this Court at 10:00 o'clock a.m. in Courtroom 11, United States Courthouse, Washington, D.C. on the 20th day of February, 1976, to show cause why summary judgment on Count I of the amended complaint should not be entered in favor of the plaintiffs; see *McMullen v. Travelers Ins. Co.*, 278 F.2d 834 (9th Cir.), *cert. denied*, 364 U.S. 867 (1960); and it is

Further ordered, That the defendants shall, unless shown to be unjust, pay the reasonable expenses, including attorneys' fees, incurred to date and through February 20, 1976 in relation to the sanctions herein imposed, and the plaintiffs shall submit to the Court an itemization of costs and fees so that the Court can make a determination as to reasonableness, said submission to be filed with the Clerk of the Court within five (5) days after the show cause hearing referred to above.

CHARLES R. RICHEY,
United States District Judge.

Mr. WILSON. Mr. LaPenta, do you see any possible way that you can accommodate the Alliance other than through merger by enabling them to have a role in handling grievances?

Do you see this as something damaging your own union's position or do you feel that we're involving ourselves in something that is really not too important in view of the number of members involved? Are we making more over this than we should?

Mr. LAPENTA. No, Congressman. However, I think the Alliance, in good faith, and in all sincerity, has tried time after time to present their case before Congress.

On the other hand, as has been brought out here, we've got to look at what's going to benefit all the postal workers in their struggle to get just working conditions and good, strong, collective bargaining agreements.

I think former Congressman Waldie pointed out don't lose sight of what the Alliance is alleging. I have to agree with him. H.R. 5023 doesn't seem to be the vehicle.

Now let me give you the benefit of the experience our union had a couple of years ago, and I thought perhaps at that time—subsequently I had to change my mind—It might be a way of accommodating the alliance. There were several different crafts representing workers and because of the dual membership we were confronted with a serious situation in two very large cities.

In New York there were a number of mail handlers members of APWU. We entered into an agreement with them at that time where we agreed their shop stewards and our shop stewards would represent mail handlers in the first and second step of the grievance procedure. We had an agreement with APWU and we put that agreement into effect on a kind of pilot basis. I've got to very candidly say to you it didn't work out.

It seemed like it was going to do the job since APWU workers stewards or mail handler stewards both represented these workers at the first and second step, but after an experience of a couple of years with this, we found out it didn't work. It did create one kind of divisive tactics that were described to you today.

The experiment that we tried, since our union had no intention of merging with APWU, just as the Alliance has stated it has no intentions of merging with APWU.

So, I say before you today on the basis of what we experienced it is not the way this can be worked out.

But on the other hand, I think Congress has to get organizations to talk to each other and see if they can't come to some settlement of this problem.

Mr. WILSON. Well, We have tried to do that, and not being a professional labor arbitrator, I find it difficult to understand. I don't see the significance of the grievance request that the alliance is making and how it would destroy the unions.

That in effect is what we're talking about, this one group. I'm assuming you will try to work something out that would accommodate them and try to overcome this problem.

It seems to me to be a very small matter, but again, I don't understand the labor situation and probably don't see it the way you folks do. I wish there were something we could work out, because this is a problem that's going to be with us.

I think you'd agree with me that this bill, H.R. 5023, would not be difficult to pass out of the committee. I think it would also pass the House without any difficulty.

I don't like the right-to-work group supporting this particular legislation, because to me the fact that the right-to-work group supports H.R. 5023 is evidence that it is an antiunion bill. I just want to

see the Alliance as a part of an arrangement that would protect them. I wish there were just something that we could figure out in a reasonable way to solve this problem, because we can't sweep it under the rug. Now, I'm going to let Mr. Clay ask you the question he wants to ask, because he has constituents waiting for him in his office.

Mr. CLAY. Thank you Mr. Chairman. I don't have any questions, I would just like to reiterate your sentiments on the subject. We have attempted to try and resolve this issue by negotiation and I think that ought to be the means of doing it.

Certainly my credentials as far as labor is concerned is in order. I come out of the labor movement. We have a great deal of respect and appreciation for what labor has done in this country.

But I certainly feel that the alliance is justified in their arguments. They ought not be forced out of business and I have a deep appreciation for what the alliance has done during their 60 years of existence.

Therefore, I agree with the chairman that we ought to attempt to effectuate some kind of agreement without the legislative process. I agree with him further, though, that if this bill is marked up we will have no trouble getting it out of this committee, out of the full committee, and no trouble getting it passed on the floor of the House.

What happens to it in Senate, I don't know; but I know right now we could pass this bill out of subcommittee and would have enough votes to pass it out of the full committee.

Mr. LAPENTA. Congressman Clay and Wilson, if you are correct, something has to be done and I think we ought to continue to work on some solution to the problem. Our union has in the past and will continue to work with you to define that solution.

Also, for the record. Our union is not afraid of the Alliance nor do we suspect that the Alliance will put us out of business or be destructive of our aims and objectives. We have no argument with the Alliance, per se. Thank you, sir.

Mr. CHAIRMAN. Thank you very much.

[Whereupon, at 12:35 the hearing was adjourned to reconvene at 10 o'clock on February 23d, 1976.]

COLLECTIVE BARGAINING REPRESENTATION OF POSTAL EMPLOYEES

MONDAY, FEBRUARY 23, 1976

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON POSTAL FACILITIES, MAIL,
AND LABOR MANAGEMENT,
Washington, D.C.

The subcommittee met at 10 a.m. in room 311, Cannon House Office Building, Hon. Charles H. Wilson (chairman of the subcommittee) presiding.

Mr. WILSON. The Subcommittee on Postal Facilities, Mail, and Labor Management will now come to order.

Today we will conclude our hearings on H.R. 56, which would allow recognized postal unions to negotiate with the U.S. Postal Service management for the purpose of establishing a union security program in conformity with the provisions of the National Labor Relations Act, and H.R. 5023, which would allow postal employees to freely choose their own representative at grievance and adverse action proceedings.

At our first hearing which was held on February 11, we heard from representatives of the National Alliance of Postal and Federal Employees, American Postal Workers Union, National Association of Letter Carriers, and Mail Handlers Division of the Laborers International Union.

This morning we will be hearing from the Seventh-day Adventists, the National Right to Work Committee, and the Public Service Research Council.

The Seventh-day Adventists have a unique program which I feel can be accommodated if the subcommittee should report out H.R. 56.

The Right To Work Committee will, of course, present a different view of the legislation under consideration than was heard from the labor representatives at our first hearings.

Our first witnesses this morning will be Mr. Gordon Engen, associate director, Department of Public Affairs and Religious Liberty, General Conference of Seventh-day Adventists, and Mr. Robert Nixon, associate director, Department of Public Affairs and Religious Liberty, General Conference of Seventh-day Adventists.

STATEMENT OF GORDON ENGEN, ASSOCIATE DIRECTOR, DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY, GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, ACCOMPANIED BY ROBERT NIXON, ASSOCIATE DIRECTOR, DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY, GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS

Mr. ENGEN. Thank you, Mr. Chairman and members of the committee.

My name is Gordon Engen; I am a minister of the Seventh-day Adventists Church and serve as an associate director in the department of public affairs and religious liberty at the world headquarters of the church located in Takoma Park, Washington, D.C.

I speak today on behalf of the 3,362 Adventists churches and the half million members of the church in the United States.

Robert Nixon, with me here, is an associate in the department. W. Melvin Adams was scheduled to testify at the hearing. He is the head of the department of public affairs and religious liberty. He was unable to be here because of a prior commitment, and he asked me to convey his regrets that he was unable to be here.

I do not intend to read his prepared statement; I would like to request, however, that it be a part of the record in the proceedings of the committee.

Therefore, we want to make a brief statement and then be available for any questions you may have concerning the problems that we see and we face as a church.

Mr. WILSON. At this time the prepared statement will be made a part of the record.

[The prepared statement follows:]

A BRIEF STATEMENT REGARDING H.R. 56

Members of the Subcommittee on Postal Facilities, Mail, and Labor Management, my name is W. Melvin Adams. I am a clergyman, the Director of the Department of Public Affairs and Religious Liberty for the Seventh-day Adventist Church at the world headquarters office in Takoma Park, Washington, D.C.

I appreciate the opportunity given me to call your attention to a serious problem posed by H.R. 56. Subsection (c) of Section 1209 of Title 39, U.S.C. (84 Stat. 719), currently protects postal employees who have religious convictions preventing them from either joining or financially supporting labor organizations. They cannot lose their jobs because they choose not to participate in labor organizations. If H.R. 56 were adopted as proposed, they would lose that religious freedom.

I do not appear today in order to take a partisan stand for or against this legislation per se. Rather, I am here on behalf of the 3,362 Adventist churches and one half million members in the United States, to appeal to you to do what is right, rather than what might be expedient, so as to prevent any further erosion of religious freedoms in our country.

As spokesman for the church on the issue before this committee, I want to confine my remarks to the narrow area of religious discrimination posed by this action. When this committee last considered the union security issue, I presented the dilemma that would be faced by Seventh-day Adventist postal workers (a relatively small number of people as compared with the total working force of the U.S. Postal Service). Adventist postal workers would be faced with choosing between obeying the voice of God as it speaks to their consciences on one hand, and suffering economic disaster through the loss of employment on the other. This is a cruel choice.

In my previous testimony, I requested that the committee adopt an accommodation for those with religious convictions against union participation.

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When the Postal Reform Bills were reported out of the committee in the U.S. House of Representatives and the U.S. Senate, each bill carried an amendment in identical language which protected religious objectors. Later, by majority vote, both the House and the Senate proved that they favor a law which protects the individual with religious convictions against either joining or supporting labor unions.

The Postal Amendment, introduced and adopted by the U.S. House Postal and Civil Service Committee on May 7, 1970, and by the U.S. Senate Postal and Civil Service Committee on May 28, 1970, is as follows:

"No individual who is a member of a religious sect, or division thereof, the established and traditional tenets or teaching of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such individual pays the Treasurer of the United States a sum equal to the initiation fees and periodic dues uniformly required as a condition of acquiring and retaining membership in a labor organization which is representative of the employee unless said individual and said labor organization mutually agree upon some other condition of employment."

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As finally voted, the Senate Bill contained both the religious objector and the Right to Work amendment. The House Bill contained only the religious objector amendment. Later, in conference, the conferees agreed to the following language which protects the religious objector:

"Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right."

In 1974, a similar exemption was adopted in the Health Care Act, now PL 93-360, that amended the National Labor Relations Act. It reads as follows:

"Any employee of a health-care institution, who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations, shall not be required to join or financially support any labor organization as a condition of employment, except that such employee may be required in lieu of periodic dues and initiation fees to pay sums equal to such dues and initiation fees to a non-religious charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by such employee from a list of no less than three such funds designated in a contract between such constitution and labor organization."

Since the current postal act requires no compulsory payments to labor organizations, the religious convictions of Seventh-day Adventist postal workers are protected.

It was with great consternation that we discovered that H.R. 56 would withdraw the accommodation in its entirety without leaving in the law any protection against religious discrimination. This, we feel, is a serious oversight that the committee will want to correct immediately, as it did before.

It has been asserted that the agency shop provision constitutes an ample accommodation. But, really, does it?

A signature on a membership card is symbolic. But financial support is the tangible, active heart of unionism. Those who object to unionism feel deeply that to give financial support is by far the most concrete way they could be asked to support a labor union. In postal union testimony a year ago, postal union officers showed no great concern for 100 per cent membership. They seemed more concerned about 100 per cent payment of dues.

The so-called agency shop provision is by no means an accommodation for Seventh-day Adventists with religious beliefs against labor union involvement. Anyone who insists that it is, takes on himself the responsibility of trying to determine what Adventist religious belief should be in this regard. The fundamental religious objection is in being a party to and fostering the actions and philosophies of labor organizations. This is accomplished by the agency shop through dues. Requiring payment of dues, then, cannot conceivably accommodate the convictions persons have against union involvement.

It would be a sad commentary on the "land of the free" if, during its bicentennial year, our country should commit an act denying religious freedom to minority religious bodies just because the majority had the power to do it.

Where conscience clause agreements have been in effect, they have not proved to be a threat to union security. We respectfully ask that the labor unions be restrained from forcing sincere Christians unnecessarily into the unemployment ranks because of religious beliefs and practices. Freedom of religion is more than a freedom merely to believe something. Without the freedom to practice that belief, there is no freedom at all. Adventist members who hold these convictions do not look to labor leaders, the Congress, the courts, or to the Adventist clergy for their convictions. From the teachings of the church, based on the inspired word of God, they follow the voice of the Lord when it says, "This is the way, walk ye in it, when ye turn to the right hand, and when ye turn to the left." (Isaiah 30:21) When this conviction becomes so strong that Christians will face starvation rather than compromise their convictions, it is only right that this committee should keep faith with the founders of our nation who decreed that the Congress should not restrict the free exercise of religion.

Should this committee fail to provide an accommodation that would allow not only the "observance" but also the "practice" of a religious belief, Adventists in the category of Postal Service workers would feel the mocking irony of the pledge of allegiance to the flag when they say, "One nation, under God, indivisible, with liberty and justice for all." I appeal to you not to force them to the sidelines where they must hang their heads in shame with those in other trades and professions and realize that the pledge of allegiance has become "liberty and justice for the majority only."

PREPARED STATEMENT OF W. MELVIN ADAMS, ASSOCIATE DIRECTOR OF THE
DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY OF THE SEVENTH-DAY
ADVENTIST CHURCH

H.R. 56 AND OTHERS COULD FORCE THE POST OFFICE TO TERMINATE POSTAL
EMPLOYEES BECAUSE OF THEIR RELIGIOUS CONVICTIONS

My name is W. Melvin Adams. I am a clergyman, and Associate Director of the Department of Public Affairs and Religious Liberty of the Seventh-day Adventist Church. This brief statement, and previous testimony, is presented in behalf of the more than 3,000 local Seventh-day Adventist congregations located in the United States.

Purpose

The Seventh-day Adventist Church opposes H.R. 56 and any other bill which would strip its church members of the right to refrain from joining or supporting labor unions.

Reason number one

The Seventh-day Adventist Church teaches its members that they should not either join or financially support labor unions or similar organizations. This is the official historical position of the church reaffirmed in October of 1972. (See Exhibit A.)

Reason number two

Because federal jobs have historically been free from forced labor union membership or support, hundreds of Seventh-day Adventists have sought and obtained work in the post office. H.R. 56 would allow conditions which could force these people to lose their jobs or compromise their religious convictions.

Reason number three

When the Postal Reform Bills were reported out of the Committee in the U.S. House of Representatives and the U.S. Senate in 1970, each bill carried an amendment in identical language which protected religious objectors. (See Exhibit B.)

Reason number four

When the EEOC laws were amended in 1972, Congress wrote in some strong protection for religious convictions. "(j) The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's, religious observance or practice without undue hardship on the conduct of the employer's business."

Since that time, EEOC has found that a union and business discriminates against an individual when they discharge him for refusing to either join or support a labor union. This has been upheld in Federal Court in the Yott v. North American Rockwell which found that both the company and the labor union were obligated to accommodate the religious convictions of an individual against joining or supporting a labor union if it could be done without being an undue hardship.

Reason number five

Individuals with religious convictions against joining or supporting a labor union who work in health-care institutions were protected last year by Congress when S. 3203 and H.R. 13678 were signed into law. It reads: "Senate S. 3203, H.R. 13678. Section 3. The National Labor Relations Act is amended by adding immediately after Section 18 thereof the following new section:"

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

SEC. 19. Any employee of a health-care institution, who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations, shall not be required to join or financially support any labor organization as a condition of employment, except that such employee may be required in lieu of periodic dues and initiation fees to pay sums equal to such dues and initiation fees to a non-religious charitable fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, chosen by such employee from a list of no less than three such funds designated in a contract between such constitution and labor organization.

Reason number six

In a number of areas where people's consciences are involved, legislatures or the courts have recognized the obligation of providing for the needs of those citizens whose beliefs and practices differ from those of the majority. Some of those unique exceptions to meet unique circumstances are as follows:

Draft laws.—Provision for those young men whose consciences do not permit them to take other men's lives.

State Sunday laws.—Provision for individuals observing Saturday.

Social security.—Provision made to exempt Amish because their religious convictions prohibit any kind of life insurance.

School attendance laws.—Provision made to exempt Amish because their religious convictions prevent them from sending their children to school beyond the eighth grade.

Pledge of Allegiance to Flag.—Provision made to exempt those who cannot pledge their allegiance because of religious convictions.

Abortion and sterilization.—Provision made to protect individuals and institutions who have religious convictions against these procedures.

Reason number seven

The AFL-CIO Executive Council recognized that people with religious convictions should be accommodated. (See Exhibit C). Unfortunately, most of the internationals and their locals have not followed the instructions of the Executive Council. Congressional action is needed to back up the good intentions of the labor unions.

APPEAL

The Seventh-day Adventist Church is not large. There are only about 500,000 members in the United States. They do not control any block of votes. They are definitely a minority and must depend upon the majority to protect them in their religious convictions. Thank you for extending that protection.

RELIGIOUS LIBERTY



EXHIBIT A

General Conference of

Seventh-day Adventists

CHURCH WORLD HEADQUARTERS: 6340 EASTERN AVENUE, NW, WASHINGTON, D.C. 20012
 TELEPHONE: (202) 723-0800 • CABLE: ADVENTIST, WASHINGTON • TELEX: 88-580

LABOR UNIONS SEVENTH-DAY ADVENTIST POSITION STATEMENT

WHEREAS, On the basis of principles set forth in the Bible, the Seventh-day Adventist Church teaches that Christ is to be Lord of the life, the ultimate authority to which Christians will submit all decisions and relationships (Acts 2:36; 5:29; Col. 3:23, 24); and

WHEREAS, The church teaches that Christians should stand apart from any organization or alliance that might impinge on the lordship of Christ in the life (Isa. 8:12, 13; 2 Cor. 6:14-18); and

WHEREAS, The Christian dare not violate his conscience by giving support to activities or policies incompatible with the principles and counsel set forth in God's Word; and

WHEREAS, An increasing number of Seventh-day Adventists are finding it necessary to explain the position of the church in relation to joining or financially supporting labor unions and similar organizations,

VOTED, 1. That the Seventh-day Adventist Church hereby reaffirm its historical position that its members should not join or financially support labor unions and similar organizations.

2. That the Seventh-day Adventist Church member is following the teaching of the church when because of religious convictions he refuses to join or financially support labor unions and similar organizations or associations, or discontinues membership or financial support of a labor union, and similar organization or association.

3. That pastors diligently inform Seventh-day Adventist Church members through sermons, personal counseling, church publications and other media of the Bible principles and the Spirit of Prophecy counsel on which the church's position is based.

--North American Division Committee on Administration
 Mexico City
 October 16-20, 1972

EXHIBIT B

POSTAL REFORM - 1970 - SETS EXAMPLE

When the Postal Reform Bills were reported out of the committee in the U. S. House of Representatives and the U. S. Senate, each bill carried an amendment in identical language which protected religious objectors. Later, by majority vote, both the House and the Senate proved that they favor a law which protects the individual with religious convictions against either joining or supporting labor unions.

The Postal Amendment, introduced and adopted by the U. S. House Postal and Civil Service Committee on May 7, 1970, and by the U. S. Senate Postal and Civil Service Committee on May 28, 1970, is as follows:

"No individual who is a member of a religious sect, or division thereof, the established and traditional tenets or teaching of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such individual pays to the Treasurer of the United States a sum equal to the initiation fees and periodic dues uniformly required as a condition of acquiring and retaining membership in a labor organization which is representative of the employee unless said individual and said labor organization mutually agree upon some other condition of employment."

As finally voted, the Senate Bill contained both the religious objector and the Right to Work amendment. The House Bill contained only the religious objector amendment. Later, in conference, the conferees agreed to the following language which protects the religious objector:

"Each employee of the Postal Service shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right."

C O P Y

Statement by the AFL-CIO Executive Council

on

Union Membership and Religious ObjectorsNew York, New York
September 20, 1965

In connection with consideration by the Congress of repeal of Section 14(b) of the Taft-Hartley Act, representatives of certain religious groups testified that some of their members have personal religious convictions which may stand in the way of their formally joining unions or, to varying degrees, participating in or financially supporting union activities.

A number of national and international unions have in the past worked out arrangements with particular religious groups for handling this problem of individual religious objectors, but other unions have not yet done so.

The Senate Labor Committee has incorporated in the bill repealing Section 14(b) provisions giving to religious objectors the option of contributing to a non-religious charity, designated by the union, sums equal to union dues and initiation fees -- provisions which the AFL-CIO supports. These provisions become operative where there are no voluntary agreements covering these matters. It is the conviction of the AFL-CIO that such voluntary union agreements are the best method for handling such matters.

Therefore this Executive Council declares it to be the policy of the AFL-CIO that unions should accommodate themselves to genuine individual religious scruples. We strongly urge all national and international unions affiliated with the AFL-CIO, that have not already done so, to:

1. Immediately adopt procedures for respecting sincere personal religious convictions as to union membership or activities; and
2. Undertake to insure that this policy is fully and sympathetically implemented by all local unions.

Department of Public Affairs and Religious Liberty
General Conference of Seventh-day Adventists
6840 Eastern Avenue, N. W., Washington, D. C. 20012

Mr. ENGEN. Thank you. I will refer only to a few highlights. First of all, let me thank you for your concern that you expressed at the close of the hearing and also here briefly. We have a number of people who have deep religious convictions. We appreciate the statement that you made, that your committee is aware of these problems and will certainly take them into consideration. The postal law as it now stands does protect these individuals; H.R. 56 would remove that protection.

I would like to just refer briefly for the record to the statement made by the Seventh-day Adventists Church in its annual council session in 1972, which was held in Mexico City. In part 1 of the resolution at that time said:

The Seventh-day Adventists church member is following the teaching of the church when because of religious convictions, he refuses to join or financially support labor unions and similar organizations or associations, or discontinues membership or financial support of a labor union and similar organizations or association.

In his statement Mr. Adams said he was not appearing either for or against specific legislation, but rather as a advocate of the free exercise of religion. I want to assure you that we become involved only in this type of testimony before committees when the issue before the Congress infringes on the right, or would have an effect on the free exercise of religion.

We firmly believe in the biblical principle of the separation of church and State as found in Matthew 22:21; Christ said, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's."

On numerous occasions we have spoken out on such issues other than the one before the committee today. In 1970, Mr. Adams presented the problem faced by Seventh-day Adventist postal employees at the time of the hearing on the postal reform. A suggested conscience clause was adopted; then it was broadened. We are grateful that this protection has been retained over these years since that time.

Mr. Adams gave his statement to this committee a little more than a year ago also, when some changes were being contemplated.

There have been labor unions, legislators, and even judges, in different parts of the country who have assumed that an agency shop would satisfy the needs of religious objections. This is not the case. Those who object on religious grounds do so on the basis of financial involvement in the organization as much, or perhaps even more, than merely on the basis of membership.

I want to underscore that for the committee because it seems to be a point on which there is some misunderstanding on various levels around the country. That is why it's important that while attempting to accommodate a particular religious conviction, that no inadvertent requirement, such as an agency shop, would be substituted, for it in itself is part of the central issue with the individuals who have religious beliefs against such participation. Up to this time, the postal workers have had a free choice in this area; this has protected the employess with religious convictions against participation in the unions.

It would be cruel irony if in our Nation's 200th year, our legislature should somehow impose religious discrimination that would force men and women out of the Postal Service unless they chose to violate their deeply held religious convictions.

If H.R. 56 were to be enacted in its present form, this would happen to scores of Seventh-day Adventists as well as members of a few other religious bodies who have similar beliefs. I know that there are many issues before the committee that hinge on various aspects of H.R. 56. I speak only to the religious issue. Should other issues be resolved and no accommodation be made for religious beliefs, we would have no choice but to oppose the bill vigorously.

In view of your comments on February 11, Mr. Chairman, we feel assured that this will not have to happen. We appreciate what you said a great deal, and we have already relayed it to many of our church leaders in other parts of the country.

I request that you, Mr. Chairman, with your background from previous history on this bill—your work with it in the past—would take the leadership in sponsoring such an amendment if the time should come. A sample of this suggested amendment, the amendment which was dealt with previously by the committee, appears in the prepared statement for the committee.

On behalf of our church members across the country, I want to thank you and the committee members for your concern over religious liberty and for your interest as you expressed it relative to H.R. 56.

Mr. WILSON. Thank you very much. You don't come here in opposition to either of the bills that are under consideration. Your concern is to make sure if any legislation is passed, it includes the religious amendment that would guarantee the part on religious beliefs.

Mr. ENGEN. That's right, Mr. Chairman. However, should the bill somehow not include such parts, such as this amendment, then we would become involved in opposition to it.

We understand your statement, and we appreciate it. We just want to reinforce that position.

Mr. WILSON. All right. Thank you.

Mr. Clay, do you have any questions?

Mr. CLAY. Approximately how many people would be affected by this amendment; do you have any idea?

Mr. ENGEN. We have not made a count of the total number of Seventh-day Adventists who are employed in the postal area. Do you have any, Mr. Nixon?

Mr. NIXON. No, just because Seventh-day Adventists are also Sabbatharians, believe in the seventh day. From time to time, our office does handle problems arising from that part of the religious spectrum. There seem to be quite a few Seventh-day Adventists, especially those of our black members, that do work for the Postal Service, especially in large city areas.

Mr. CLAY. I assume you would have no objection to those members of your religious sect paying a like amount to some charitable organization of their choice?

Mr. NIXON. No problem at all.

Mr. ENGEN. That's in the recommended amendment which is in the prepared statement.

Mr. CLAY. Thank you.

Mr. WILSON. Thank you, I appreciate it very much.

Mr. ENGEN. Thank you for the opportunity.

Mr. WILSON. I must apologize for the small attendance; there is no business today on the floor, and there are numerous other committee meetings.

[The letter and statement which follow were received for inclusion in the record:]

DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY,
GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS,
Washington, D.C., February 25, 1976.

Congressman CHARLES H. WILSON,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. WILSON: It was a pleasure to meet you in person last Monday, February 23, following the subcommittee hearings on HR-56 and HR-5023. You conducted the hearings in a most fair and open manner, and I appreciated the opportunity to present the testimony.

In the question period, I responded to your question concerning Catholic positions on the subject of labor unionism. In my answer I referred to the testimony of Charles Phillips, the representative of the Catholic Bishops, who testified at the state legislature in Wisconsin concerning a conscience clause identical to the one proposed here in your subcommittee for HR-56. I sent a copy of his testimony to Mr. Gould and asked that it be included with our statement, in view of the discussion during the committee hearings. If at any time you have any additional questions on the topics we presented, or if other items of legislation should be posed, we would welcome your contact at any time.

Sincerely yours,

GORDON ENGEN, Associate Director.

DEPARTMENT OF PUBLIC AFFAIRS AND RELIGIOUS LIBERTY,
GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS,
Washington, D.C., February 25, 1976.

Mr. GEORGE GOULD,
Subcommittee on Postal Facilities,
Cannon House Office Building, Washington D.C.

DEAR MR. GOULD: It was a pleasure to chat with you briefly following the committee hearing Monday, February 23.

I promised to send you a copy of the testimony presented by Charles Phillips to the Wisconsin Legislature about two years ago, related to a bill that would have provided a conscience clause almost identical to the one submitted to this committee. This is the statement that I referred to in my testimony before the committee. I would like you to include it in the proceedings of the committee, inasmuch as this item came out in the question period following my testimony.

I you have any questions concerning the materials we presented, or if there are any developments that we should be made aware of, please feel free to contact me at any time. I am enclosing one of my cards for your quick reference.

Sincerely yours,

GORDON ENGEN, Associate Director.

STATEMENT OF CHARLES PHILLIPS

My name is Charles Phillips, and I am the Executive Director of the Wisconsin Catholic Conference, appearing on behalf of the Conference in support of AB 455. "No liberty guaranteed by our Constitution is more important for vital to our free society than is the religious liberty protected by the Free Exercise Clause of the First Amendment." Those are the opening words of Chief Justice Harold Hallows of the Wisconsin Supreme Court in the majority opinion upholding the rights of the Amish two years ago in the Yoder Yutzy, and Miller cases.

The First Amendment provides that Congress shall make no law prohibiting the free exercise of religion and guarantees to each of us the freedom of worship and the freedom from coercion in matters religious.

Too often, it seems, this precious right is given the limited interpretation of allowing anyone to attend any church they may choose . . . or not attend, if they so choose. The Free Exercise Clause, however, is not restricted in its protection only to formal acts of worship. It includes in its broadest sense the right for complete exercise of religion, so that citizens are not hindered in leading their lives in accordance with their conscience.

We can't say we allow citizens freedom of religion if we prevent or coerce or somehow dissuade them from taking their religious values and beliefs out past the church door (or the synagogue door) into their activities in the secular world.

The protection and promotion of the free exercise of religion ranks among the essential duties of government. Whenever and wherever the state sees these rights being violated or compromised, it has the duty to correct such abuses by just laws or by other appropriate means.

It is the teaching of my church that the right to religious freedom has its foundation in the dignity of the human person.

With this right comes an obligation. That is the obligation to allow and to accept that others may have religious values and beliefs different from our own. It is in a sense of fulfillment of that obligation that the Wisconsin Catholic Conference supports AB 455. Although the Catholic Church has consistently throughout history taken a strong position in favor of the rights of employees to organize labor unions, we accept that others may, in conscience, disagree. The fact that the number of those disagreeing on religious grounds may be small, does not relieve us of the responsibility to support their right to disagree. To the contrary, the very fact that they are a minority, with a smaller voice in our community, makes the obligation that much greater.

The bill before this committee today makes provision for a very real and sincere religious conviction of a small minority. It poses no threat to the continuation or advancement of labor unions. It will, however, help to hold some of the most dependable and honest employees in the State of Wisconsin. If they are forced to decide between joining or supporting a labor union on the one hand or losing their jobs on the other, many of these sincere, honest people will choose to give up their employment. That's a cruel choice to make. Even more cruel would be to force them, out of economic necessity, to remain in their employment while violating the dictates of their conscience. I don't believe they should be forced to make either choice. A viable alternative is provided in AB 455 so that they may keep their employment and their convictions.

Even if we disagree with these convictions, we should protect their right to be different. "When we lose the right to be different," said Charles Evans Hughes, "we lose the right to be free."

I urge your endorsement of AB 455.

Mr. WILSON. The next witness is Mr. Charles W. Bailey, vice president in charge of research, National Right to Work Committee, and Mr. Andrew E. Hare, vice president in charge of legislation, National Right to Work Committee.

**STATEMENT OF CHARLES W. BAILEY, VICE PRESIDENT IN CHARGE
OF RESEARCH, NATIONAL RIGHT TO WORK COMMITTEE, ACCOMPANIED BY
ANDREW E. HARE, VICE PRESIDENT IN CHARGE OF
LEGISLATION, NATIONAL RIGHT TO WORK COMMITTEE**

Mr. BAILEY. Mr. Chairman, members of the committee, I am Charles Bailey, of the National Right to Work Committee. Our chief executive officer, Mr. Reed Larson, is unable to be here today, and I am appearing as his substitute. Mr. Hare, of course, is on my left.

Our organization is dedicated exclusively to the proposition that Americans must have the right to join labor unions, but must not be compelled to do so. We advocate absolute freedom of choice for wage earners with respect to their union or nonunion status. Our program is actively supported by more than 700,000 citizens from all walks of life. We welcome this opportunity to testify today on H.R. 56 and H.R. 5023.

Mr. Chairman and members of the committee, I will dispense with reading the prepared statement that was submitted to your committee on the 11th, and will simply attempt to summarize that statement. We

do request, of course, that the longer statement be made a part of the printed hearing.

With reference to H.R. 56, I will say only this: Its passage would legalize the forced unionization of the postal employees who don't want to be represented by any collective-bargaining agent, or by the certified union within their particular bargaining unit; therefore, we oppose H.R. 56.

On the other hand, we support H.R. 5023 because it will restore, in part at least, the postal employee's right to representation of his own choosing in one phase of his relationship with his employer. This is a small step in the right direction, and it is a long overdue departure from what we regard as the unwise practice of extending representation privileges exclusively to a certified labor union.

Mr. Larson submitted to your committee last year a carefully researched statement pertinent to the granting of exclusive representation privileges to labor organizations. Mr. Chairman, we request that his statement be made part of this hearing record.

H.R. 5023 focuses attention on a vital question which is: Should employees be compelled against their will to accept union representation? The individual worker is stripped of his basic right to representation of his own choosing when a labor organization gains monopoly bargaining powers.

Under the prevailing law, a postal employee is required to accept the representation of a union chosen by as few as 51 percent of his fellow workers. It's our understanding that no elections with respect to representation have been conducted since the adoption of the Postal Reorganization Act of 1970.

Obviously, members of the National Alliance of Postal and Federal Employees desire to be represented by their own organization. They are denied its representation because of its inability to achieve majority status within certain of the Postal Service Corporation's numerous bargaining units.

A few months ago President Frank J. Dodd of the New Jersey State Senate made what we think is a very sensible recommendation to his colleagues in Trenton. He said, and I quote:

Let us negotiate, or rather let us legislate, a system where unions will negotiate wage and salary benefits only for those public employees who are members of unions; then there will be no free rides for anyone.

We hope that Members of this Congress will seriously consider repealing the monopoly bargaining provisions in all Federal labor laws. Those provisions encourage an exclusive representation scheme which abridges freedom of self determination.

Every citizen's right to contract for employment was reaffirmed by the abolition of slavery. In our view, any law which prevents an individual from bargaining with his employer over terms and conditions of his own employment is contrary to the 13th amendment.

We invite your attention, Mr. Chairman and members of the committee, to an article in the April 1975 University of Pennsylvania Law Review; it was written by a former labor union attorney who now teaches law at the University of Texas. Professor George Schatzki takes strong exception to exclusive representation privileges for unions.

He wrote:

How curious that the unions should fight so vigorously for the "burden" of representing people who do not want the union to represent them, but then should argue for fair payment by these dissidents.

Professor Schatzki advocates "the principle that every employee could select his or her own representative if any."

We request the inclusion of Professor Schatzki's article in the hearing record.

We're delighted that this committee scheduled hearings simultaneously on H.R. 56 and H.R. 5023, because we believe it dramatizes the inconsistencies of the advocates of compulsory unionism. On the one hand they are saying:

Enact H.R. 56 so that those free riding nonmembers will be required to compensate us for our representation of their interests."

With reference to H.R. 5023 they are saying:

Don't take away the privilege we now have to represent those employees who don't want to be members of our organizations and who don't want to be represented by our organizations.

Thank you very much, Mr. Chairman.

Mr. WILSON. Thank you.

On page 2 of your statement, Mr. Bailey, you make reference to:

Seventy-nine percent of the American people expressed disagreement with the suggestion that Congress should pass a law which would allow agreements requiring employees to join or pay dues to a union in order to work for the Federal Government.

Who conducted the survey?

Mr. BAILEY. Opinion Research Corp. of Princeton, N.J., Mr. Chairman. We will be pleased, of course, to provide copies of the complete text of that study.

Mr. WILSON. Mr. Clay, do you have any questions?

Mr. CLAY. Just one question, Mr. Chairman. Don't you believe in the democratic principle of majority rule?

Mr. BAILEY. I certainly do, Congressman, where public government is concerned. The alternative, of course, to majority rule with respect to public government is anarchy. However, there is a tremendous difference between the application of a majority rule principle insofar as public government is concerned and the invocation of that particular principle to enable the members of private associations to conscript as dues-paying members those who are not members and do not wish to be members.

Mr. CLAY. I think I received only 78 percent of the vote to come to Congress; are you suggesting that perhaps the other 22 percent ought to be able to choose their representative in the Congress to speak on all of the matters relative to the First District of Missouri?

Mr. BAILEY. Oh, no, Congressman. Insofar as public government and your presence in the Congress are concerned, we subscribe wholeheartedly to the majority rule principle. What I'm saying is that public government is invested with sovereign power; under the Constitution, as we read it, only public government should have sovereign power.

Mr. CLAY. Will you tell me what part of the Constitution says only the Government should have sovereign powers?

Mr. BAILEY. I don't know the specific provision.

Mr. CLAY. Are you paraphrasing the Constitution, or is that an exact quote?

Mr. BAILEY. No, I don't believe it is a direct quote, Congressman. Our view, of course, is that sovereign power should not be extended to private associations.

Mr. CLAY. Including corporations and their relationship to stockholders?

Mr. BAILEY. That's right.

Mr. CLAY. You don't believe that 51 percent of the stockholders should determine the policy of that corporation?

Mr. BAILEY. Oh, yes, we do support that. The point, of course, is that no one is compelled to buy the stock of a particular corporation, or having bought it, to refrain from selling it if he chooses to do so.

Mr. CLAY. Who is compelled to work for the Federal Government, only if you're drafted into the Army, even now we don't draft people.

Mr. BAILEY. No one is compelled, to my knowledge.

Mr. CLAY. Then what's the difference between working for the Federal Government and being a stockholder in a corporation?

Mr. BAILEY. I assume there is no significant difference.

Mr. CLAY. At the same time you're setting up significant difference of treatment between stockholders of corporations and employees of the Federal Government.

Mr. BAILEY. Your analogy escapes me, Congressman.

Mr. CLAY. Yours escapes me, too.

Thank you, Mr. Chairman.

Mr. WILSON. Mr. Bailey, have you or any officer of your organization discussed H.R. 5023 with the National Alliance of Postal & Federal Employees?

Mr. BAILEY. Mr. Hare, who is our principal legislative representative, says we have not.

Mr. WILSON. The strange thing about this legislation is, of course, the alliance between the alliance and the Right to Work Committee. I recognize that there are many pieces of legislation where different groups get together for one reason or another to sponsor or oppose legislation. I don't think that it would be unfair to say that you are not a pro-labor organization.

Mr. BAILEY. Yes, we absolutely are a pro-labor organization, Mr. Chairman.

You may be surprised to learn that the president of the National Right to Work Committee has been a dues-paying member for more than 30 years of what is now identified as United Transportation Union; he's a veteran railroader. The chairman of the board of directors of our organization is a man who has been a dues-paying member for more than 20 years of the National Federation of Federal Employees.

We are pro-labor; we are anticomulsion. We insist that each individual worker be permitted to decide for himself whether a labor union deserves his support. Absolute freedom of choice is our position.

Mr. WILSON. Well, I recall a stockholders' meeting of Rockwell Corp. recently where a small percentage of the Rockwell stockholders agreed to oppose all the programs that involved Rockwell with the Federal Government. So I guess unions can also have people who don't agree with what the union leaders and majority stand for.

It is not unusual to have dues-paying members of these unions who don't understand the union's programs.

Do you have anything else, Mr. Clay?

Mr. CLAY. No.

Mr. WILSON. Thank you very much.

Mr. BAILEY. Thank you, Mr. Chairman.

[The material submitted for the record by Mr. Bailey follows:]

STATEMENT OF CHARLES W. BAILEY, VICE PRESIDENT—RESEARCH, NATIONAL RIGHT TO WORK COMMITTEE

Mr. Chairman and members of the committee, my name is Charles Bailey. I'm the National Right to Work Committee's research director and one of its vice presidents. Our chief executive officer, Mr. Reed Larson, is unable to be here today and I'm appearing as his substitute.

The National Right to Work Committee is a citizens' organization dedicated exclusively to the proposition that Americans must have the right to join labor unions but must not be compelled to do so. In our advocacy of absolute freedom of choice for wage-earners with respect to their union or non-union status, we are actively supported by more than 700,000 citizens from all walks of life. We welcome this opportunity to present testimony to the Committee on H.R. 56 and H.R. 5023. Today the nation's postal employees enjoy the unrestricted right to join labor organizations, if they wish to do so. They also enjoy the corollary right to refrain from joining and supporting such organizations.

We again urge rejection of H.R. 56 because it would deprive postal workers of their right to withhold support from labor unions. By nullifying that basic individual right, it would transform the Postal Service Corporation into a compulsory union shop. Employees would be discharged without legal recourse for refusing to pay money to private associations—in this case labor unions. The length of service, loyalty and efficiency of those employees would be callously disregarded. Their refusal to conform would be the overriding consideration. Because all of us are affected by its operation, everyone recognizes that the Postal Service Corporation is confronted by myriad problems. Is anyone suggesting with a straight face that any of those problems will be solved or alleviated by compelling all postal employees to pay tribute to labor organizations?

Such a suggestion would be laughable on its face. Postal Service patrons have no enthusiasm for this legislation. Within the past year a nationwide study disclosed overwhelming public opposition to it. No fewer than 79 percent of the American people expressed disagreement with the suggestion that Congress should pass "a law which would allow agreements requiring employees to join or pay dues to a union in order to work for the Federal Government."

It's an understatement to say that the bargaining power of postal unions is not diminished by their inability to conscript dissident employees as members. The public record shows they exacted unprecedented concessions, in the form of wages and fringe benefits, from the postal corporation's representatives when the existing contracts were negotiated.

Enactment of H.R. 56 would represent a grant of sovereign power to postal union officials, namely, the power to tax employees who don't want to be represented by those unions. The preservation of our free society demands that sovereign power be exercised only by a public government accountable to the governed. Certain union spokesmen argue that all workers covered by union agreements invariably benefit from union representation. Those who embrace that argument insist that unions are entitled to compensation for their services from all employees.

This is a dangerous doctrine. If carried to its logical conclusion, Congress would be obliged to authorize the National Association for the Advancement of Colored People to tax all black citizens. NAACP officials can argue persuasively that their organization's program has benefitted all of the nation's black people. It is to the credit of those officials that they have not demanded the same extraordinary privilege sought by union officials supporting H.R. 56. We applaud your Committee for accordng consideration to H.R. 5023.

As we understand it, this bill will restore the postal employee's right to representation of his own choosing in grievance and adverse actions arising under a collective bargaining agreement. We regard it as a small step in the right direction and a long-overdue departure from the unwise practice of extending representation privileges exclusively to a certified labor union. In our view, H.R. 5023 should be broadened to cover the entire relationship between an employee and his employer.

Last year Mr. Reed Larson submitted to your committee a carefully-researched statement pertinent to the granting of exclusive representation privileges to labor organizations. Mr. Chairman, we request that his statement be made a part of his hearing record. H.R. 5023 focuses attention on a vital question: Should employees be compelled to accept union representation against their will? When enacted into law, this bill will relieve postal union officials—at least in part—of what they chose to describe as “an unfair burden” and “the legal obligation to represent free-riding non-members.”

The individual worker is stripped of his basic right to representation of his own choosing when a labor organization gains monopoly bargaining powers. Under the prevailing law, a postal employee is required to accept the representation of a union chosen by as few as 51 percent of his fellow workers.

Obviously, members of the National Allitance of Postal and Federal Employees desire to be represented by their own organization. They are denied its representation because of its inability to achieve majority status within certain of the Postal Service Corporation's numerous bargaining units. This legislation will assure them of their own organization's representation.

The concept of monopoly bargaining privileges figured prominently in a New Jersey Senate debate less than three months ago. The state senators were considering a bill designed to legalize the forcible collection of “agency shop” fees from non-union employees of the state, its counties and its municipalities. That proposal was identified as Assembly Bill 524. It had been approved by a lopsided 61-to-4 margin by New Jersey's lower house in May 1974. Among its outspoken opponents in the state legislature was Senate President Frank J. Dodd, an Essex County Democrat. Its proponents asserted that non-members should be required to reward unions for their services because all public employees benefit from union representation.

Senator Dodd replied to that argument by saying: “Let us legislate a system where unions will negotiate wage and salary benefits only for those public employees who are members of unions * * * then there will be no ‘free rides’ for anyone. * * * But, of course, the public employee labor unions wouldn't like that very much because what they really want is the revenue they will gain from the enactment of Assembly Bill 524 as presently written * * *.”

The cogency of Senator Dodd's rebuttal to the specious “free rider” argument was not lost on his colleagues. Despite having been approved almost unanimously by the New Jersey Assembly, the “agency shop” measure was rejected by the Senate by a vote of 25 to 5.

We fervently hope that members of this Congress will carefully consider the advisability of repealing the monopoly bargaining provisions in all federal labor laws. Those provisions create a constitutional problem because they dictate that all input from employees to their employers must be funneled through unions certified as the employee's exclusive representatives.

An exclusive representation scheme abridges freedom of self-determination. Individual liberty is reserved under our Constitution for autonomous exercise by individual citizens. That liberty cannot properly be collectivized or otherwise subjected to the so-called “majority rule” principle within private organizations.

The institution of slavery denied the individual's inherent right to contract for employment and his right to earn wages and use them for his own benefit. By abolishing slavery, the Thirteenth Amendment to the Constitution reaffirmed every citizen's right to contract for employment. Any law which prevents an

individual from bargaining with his employer with reference to the terms and conditions of his own employment is, in our view, inconsistent with the Constitution.

[Exclusive representation grants monopoly powers to labor unions to negotiate terms and conditions of employment for all workers in bargaining units. Those unions are permitted to bind both voluntary members and dissenting non-members.]

In matters of fundamental personal liberty, our Constitution mandates individual autonomy—not "collective" decisionmaking. The U.S. Supreme Court so ruled more than 30 years ago after the State of West Virginia endeavored to require students in its public schools to recite a pledge of allegiance and to impose penalties upon those who refused to do so. The Court invalidated that requirement in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). The justices said: "The very purpose of the Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech * * * and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

We contend the "majority rule" principle is perverted when invoked to prevent individual citizens their right to represent themselves in dealings with their employers. We invite the attention of members of your Committee to an article which appeared last year in the *University of Pennsylvania Law Review*. Written by George Schatzki, a professor of the University of Texas, it's entitled "Majority Rule, Exclusive Representation, and the Interest of Individual Workers: Should Exclusivity Be Abolished?"

The writer is a former employee of the National Labor Relations Board, a one-time practicing attorney who represented the International Brotherhood of Teamsters and other unions, and he taught at Harvard and the University of Pennsylvania before joining the University of Texas faculty.

Professor Schatzki recalls that during the Congressional debates which preceded the enactment of the National Labor Relations Act in 1935 union spokesmen insisted that exclusive representation privileges be extended to recognized unions. He observed in his article: "How curious that the unions should fight so vigorously for the 'burden' of representing people who do not want the union to represent them, but then should argue for fair payment by these dissidents."

The professor advocates "the principle that every employee could select his or her own representative, if any." He recommends labor law reform providing that "no one would be represented by a labor organization unless it was actually selected by that individual. An employee will be neither represented by, nor coerced into joining, any union other than one that the employee wants."

Professor Schatzki envisions a new law which will obligate an employee to support a labor organization if he requests its representation. "The sanction for not joining the union which represents someone," he wrote, "would be merely to exclude the individual from the right to the contractual benefits of the collective bargaining process in which that union engages." Mr. Chairman, we request that the full text of Professor Schatzki's article be included in the hearing record.

Thank you for your attention.

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STATEMENT OF REED LARSON, EXECUTIVE VICE PRESIDENT,
NATIONAL RIGHT-TO-WORK COMMITTEE ON H.R. 56

The claim that the elimination of monopoly bargaining privileges for unions—so-called “exclusive representation”—would create a bargaining “chaos” rests on a serious misconception of how free bargaining operates.

It is a popular fallacy to believe that employers—and especially the government as an employer—can and do set wages, hours, and other terms and conditions of employment “unilaterally” under a system of free bargaining. Where government can draft its employees, of course, it may be appropriate to describe as “unilateral” the arrangements made. But a draft system has nothing to do with free bargaining by individual employees or unions acting as agents for their voluntary members. Usually, government recruits its employees from the same source as any other employer: the labor market. On the free labor market, however, government is not the only bidder; it must compete with literally hundreds of thousands of private employers. In this process of competition, the government must offer terms and conditions of employment at least as desirable as do those private employers. It is forced to do so by its employees’ “bargaining power” their ability to find other jobs in private industry.

Thus, if anything, the terms of public-service employment are set “unilaterally”, not by government, but by the alternatives available to workers in the labor market. Unless it resorts to the draft, government is powerless to require any employee to work in the public sector for less than he can earn in private employment. As an employer, government faces a wage structure that is determined by the interaction of numerous market forces; and it must bring its employment policies into line with that wage structure if it is to attract sufficient numbers of sufficiently skilled individuals to perform its various tasks. The free-market wage structure is itself determined by many factors; but the most important is employer competition for the available labor supply. Wage-rates for particular types of jobs are established in the same way as prices for particular goods; by competitive bidding among purchasers.

Once the economics of wage-rate determination is understood, the notion that a system of free bargaining by individuals would be “chaotic” appears absurd and self-contradictory. Employers, including government, will pay the highest uniform wage-rate necessary to hire as many qualified employees as they require. They will pay similarly skilled employees an identical wage for equal work simply because (1) a higher wage is unnecessary, and (2) a lower wage is insufficient to attract enough employees. If an employer wants to achieve his goals with maximum efficiency he must pay the uniform market wage-rate—no more, no less. Uniformity in treatment of employees arises on the market not because of monopoly bargaining privileges granted to labor unions, but because, through the give-and-take of millions of individual decisions, a market determination emerges that reflects the collective judgment of society as a whole that certain labor services should be valued at a certain price.

“Chaos” arises only when some individuals or groups—among either employers or employees—decide to disregard the judgment of society as a whole, and to substitute their own arbitrary notions of what wage-rates should be. If some private employer refuses to accept the determination of the market that the wage-rate for some labor service should be X, but insists on offering only a smaller amount Y, he can create a temporary disequilibrium in the social division of labor; but the price he must pay for his refusal to accept the social judgment—in terms of profits lost because of the resulting inability to hire a full workforce—acts as a disciplining stimulus to compel him to make his own hiring policy consistent with the market’s. Similarly, if the government as an employer disregards market signals, it must pay the ultimate political price when diminished public services create public hostility to incumbent office-holders. The same reasoning, of course, applies to employees. If a group of employees refuses to accept the wage-rate offered to them, they can organize a union and strike for higher wages. But if their demands are inconsistent with the wage-rate set by the market—that is, if their strike is one against the judgment of society as a whole—continued unemployment will be the price of their refusal to cooperate with everyone else in the division of labor.

To be sure, strikes, lockouts, and other forms of labor strife in either the private or the public sector cause dislocations in the social system of cooperative effort. These dislocations are not the result of free individual bargaining, but of attempts by some to thwart the judgment of society as a whole. Such dislocations can be cured or prevented by government performing its proper role of policing market

functions, eliminating monopoly by ensuring freedom of entry, and suppressing violence, extortion, and fraud. They cannot be cured—but rather are caused and exacerbated—when government grants any group special monopoly privileges to interfere with the free functioning of the market price-and-wage system. Whenever government tolerates or creates some enclave of monopoly privilege it necessarily creates chaos, and frustrates the real goals of society. If government wants to minimize such chaos, its foremost concern should be with minimizing every kind of special monopoly privilege exercised by any group, for any reason.

The monopoly bargaining privileges (exclusive representation) granted to some unions have no purpose other than to subordinate the decisions of individual workers to the dictates of labor-union leaders. But, in doing so, these privileges operate to prevent workers from following market signals, and from incorporating their actions in the social division of labor in the way most advantageous for all. They especially hinder the poor, unskilled, or otherwise under-achieving and under-privileged worker from using his own individual bargaining power to advance himself in the work-force. Thus, the exclusive-representation system hinders society twice over: first, in making less efficient the division of labor, and thereby lowering living standards for everyone; and secondly, by placing a disproportionate burden upon those workers least able to shoulder it, with all the resulting social costs that entails. At a time when Congress is especially concerned with the plight of depressed minorities, the notion that exclusive-representation schemes should be extended and strengthened through so-called "agency shop" or "union shop" statutes is grotesque.

It is also a common fallacy to believe that free individual bargaining is "unworkable" because some workers would receive "free rides" on the bargaining efforts of others. The argument seems to be that, if a union negotiates an arrangement for its own members, non-union workers could make individual contracts based on the same terms and conditions, but would not have paid anything to support the union's earlier bargaining efforts—and therefore would be "free riders."

This argument assumes that a union-negotiated arrangement provides "benefits" for workers that they would not have received through individual bargaining. (Certainly an individual should not be required to pay for "representation" or "services" that provide him with nothing he did not already have, or would not have achieved on his own.) Such an assumption has never been *proved*, however, as many economists have noted. And the U.S. Court of Appeals for the Second Circuit recently said in the *Buckley* case that there was no rational basis for determining the extent of "benefit" conferred on an individual employee by a union "representing" him. It seems strange and unfair at least to condemn a class of individuals as "free riders" when it has not been demonstrated that they are receiving any ride at all, or when such a demonstration may, in fact, be impossible.

A more important point, though, is that the "free rider" argument assumes that the "ride" (such as it is) is truly "free". That is hardly the case. Where a dissenting worker is subject to exclusive representation, he is denied his fundamental freedom of employment: his wages, hours, and other terms and conditions of employment are determined by the union, and not by himself. Now, nothing is more sure in constitutional law than that the freedom of employment has been recognized from the earliest days of the common law until today, to be fundamental. The Supreme Court on more than one occasion has referred to it as "the very essence" of the liberty the Constitution protects for all Americans. Therefore denial of the freedom of employment by subordination of the individual to the bargaining dictates of a union certainly deprives him of a very valuable privilege. Is that deprivation sufficiently "outweighed" by the unproven "benefits" of union bargaining to be worth the cost? Is a man a "free rider" where he receives material "benefits" only at the expense of his most important constitutional freedoms? Can material "benefits" be weighed against the deprivation of constitutional freedoms? Certainly these are very difficult questions which are not answered by the glib argument that anyone who might "benefit" from union "representation" should pay for it, irrespective of the burdens it imposes on him otherwise.

Of course, this "free rider" problem is not entirely new. In a series of cases decided about thirty years ago, the Supreme Court was faced with the question of whether States could impose a "tax" on the freedoms of speech and religion. The Court quite rightly held that the exercise of such fundamental freedoms could not be burdened by government-imposed charges. Describing the results of these decisions, Justice Frankfurter said that individuals exercising fundamental freedoms occupied a preferred position, "even to the extent of relieving

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them from an unhampering and non-discriminatory duty of bearing their share of the cost of maintaining the peace and the other amenities of a civilized society." That is, the Supreme Court has recognized that the "free-rider" argument is insufficient to justify impositions upon fundamental freedoms even when imposed in the form of governmental taxes. Why private labor unions should enjoy a more advantageous position than government is difficult to understand.

Finally, the "free-rider" argument proves too much. For example, imagine two local unions, each representing an identical group of employees. Local *A* negotiates a collective agreement. Non-union employees in its bargaining unit are required to pay "agency" fees. Local *B* then copies, word for word, the agreement negotiated by *A* and uses it in its negotiations. Should all the members of Local *B*'s bargaining unit pay "agency" fees to Local *A*? Or should only the non-union employees in *B*'s unit pay?

Obviously, no one would apply the "free-rider" argument between bargaining units. But if not, why should anyone be quick to assume it should apply within a bargaining unit? After all, the whole concept of the "appropriate bargaining unit" is an artifact of the exclusive-representation scheme to begin with. There is nothing "given" or "sacred" about an "appropriate unit" that requires one to lose all touch with reality and fairness when dealing with it. Indeed, if it is the "appropriate unit" idea that straight-jackets people into accepting the "free-rider" theory, with all the consequences that has in terms of denying employees their fundamental freedoms, perhaps the easiest (and most logical) alternative is simply to discard the "appropriate unit" notion—and recognize that, where employment is concerned, every worker is an "appropriate unit" for bargaining purposes. This, at least, would be consistent with the idea at the heart of our constitutional system: that every individual has value as an individual, not merely as an anonymous member of some group.

In short, public employment can function efficiently and fairly without monopoly bargaining privileges for unions. To grant such privileges, and to strengthen them with "agency" or "union shop" schemes, is the surest way both to bring chaos to the provision of public services and injustice to the employees whose labor provides those services.

MAJORITY RULE, EXCLUSIVE REPRESENTATION, AND THE INTERESTS OF INDIVIDUAL WORKERS: SHOULD EXCLUSIVITY BE ABOLISHED?

GEORGE SCHATZKI†

Under the Taft-Hartley (nee Wagner) Act, the National Labor Relations Board is authorized to conduct elections among groups of employees to determine whether a union, by obtaining a majority vote, shall be the exclusive representative of any given group of employees for the purposes of collective bargaining with their employer.¹ In addition, the Act has been interpreted to permit, or even require, an employer to recognize a union as the exclusive bargaining representative of a group of its employees without an election if it is established, first, that the union was selected by a majority of those employees to be represented,² and second, that the employer's antiunion conduct made a fair election improbable. Implicit in all of this, and explicit in section 9 of the Act, is the necessity to determine the "appropriate unit" for these purposes. Since the Act only requires a majority, and not unanimity, the Board is not charged to determine what each individual employee believes or desires to be the appropriate unit; and the Board does not consult the employees or attempt to ascertain their wishes. Rather, the Board looks to many "objective" factors in any given case to make the determination. While some of the factors may indirectly reflect individual employee preferences, and while much of the Board rhetoric in defining the appropriate unit is about the community of interests among the employees,³ in truth most of the

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¹ 29 U.S.C. § 159(a) (1970).

² *Linden Lumber Div., Summer & Co. v. NLRB*, 95 S. Ct. 429 (1974); *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

³ *E.g.*, *Bomber Bait Co.*, 85 L.R.R.M. 1125, 1125-26 (1973): "In view of the record evidence which establishes that the homeworkers and the plant employees share a community of interest, and in view of the agreement of the parties to include these employees in the same unit which is not contrary to Board policy, there is no basis for failing to include homeworkers in an overall production and maintenance unit." It is worth noting that while the rhetoric is to "community of interest,"

factors which go into determining the unit reflect either the structure the employer has given its business,⁴ or the wishes of the petitioning labor organization,⁵ or both. Thus, employees' interests are usually not relevant to the identification of the appropriate unit's profile. The Board assumes that there is—or is not—a community of interests among certain employees, but a conclusion on this issue does not reflect or have any relationship to the individual employees' own views of their community of interests. The determining factor is the Board's view of what ought to be, or might be, or is, a community of interests among employees. One can guess that consistency of the Board's conclusions with employees' choices of who should be in the same unit is mere happenstance.

In addition, as already pointed out, as many as one less than half the employees in a designated unit may have a collective bargaining representative imposed upon them which they not only did not want, but which they consistently and vigorously opposed. The union which is designated by a majority of the relevant employees not only negotiates collective bargaining contracts on behalf of the employees who opposed it, but is also the exclusive agent of those opposition employees in settling their individual grievances with the employer.

The purposes of this Article are, first, to explore the apparent consequences of the doctrine of exclusive representation, and second, to ask whether the federal labor laws would do better by abandoning the doctrine.

I. CURRENT LABOR RELATIONS LAW AND THE INDIVIDUAL WORKER

Generally, individual interests have received short shrift under the National Labor Relations Act in a variety of contexts.⁶

the fact that the employer and the union wanted the unit may have been the true determinant in this case. Moreover, a close reading of the cases shows that "community of interest" is defined by job conditions imposed by the employer.

⁴ *E.g.*, *Continental Baking Co.*, 99 N.L.R.B. 777, 778 (1952). "First and foremost is the principle that mutuality of interests in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate bargaining unit." Note that lip service is paid "mutuality of interests" of employees, but the real factors for decision are the conditions of employment set by the employer.

⁵ Section 9(c)(5), 29 U.S.C. § 159(c)(5) (1970), precludes the extent of union organizational activity from being "controlling," but union desires have an enormous impact on the Board's determination of the appropriate unit. *See NLRB v. Metropolitan Life Ins. Co.*, 380 U.S. 438 (1965).

⁶ For fear of being identified as a polemicist, I should make clear that the Board

As described above, only lip service is paid to individual interests in the unit determination process; in fact, those interests are consistently overwhelmed by other considerations. In other contexts, lip service—at best—is the only recognition given individual interests as the Act is usually (perhaps, always) interpreted.

For example, in *Exchange Parts*,⁷ the employer improved the employees' working conditions shortly before an NLRB-conducted election. As a result, it was assumed by the Board, the union lost the election. Since the union challenged the election for this reason, the Board had to determine whether the employer's behavior constituted improper interference with the conduct of a fair election. The Board held the employer's acts unlawful; the Supreme Court agreed. In neither the Board's nor the Supreme Court's opinion is there recognition of the fact that to set aside the election and order the unilateral changes rescinded would deny the employees what it was they desired.

In *Darlington*,⁸ the Supreme Court held that section 8(a)(3) does not protect employees who join unions; the Act protects only employees in thinking or talking about joining unions. The statute outlaws employment discrimination which discourages union membership (does loss of employment for designating a union qualify?). The Court concluded that the Act protects only nonexistent employees in a case in which the employer went completely out of business and that there could therefore be no violation in such a case (even though this meant all the employees lost their jobs because a majority of them engaged in union activity).⁹

and the Supreme Court have not universally ignored individual employees' interests when those interests interfered with other interests. See, e.g., *NLRB v. Magnavox Co.*, 415 U.S. 322 (1974) (employer cannot enforce a collective bargaining contract against individual employees who violate provision forbidding distribution of union literature during nonworking time in nonworking areas by soliciting for a union other than the one that currently represented the employees); *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962) (unrepresented employees who engage in concerted walk-out, arguably without notice or explanation to the employer, are protected by the Act); and *Steele v. Louisville & N.R.R.*, 323 U.S. 192 (1944) (exclusive bargaining representative is liable to employees who are subjected to inferior representation based on their race). However, it is not unfair to state that usually, if not always, the resolution of conflicting interests has been against individual interests if any reasonable case could be made for that conclusion, regardless of the opportunity for an equally or more reasonable resolution in favor of individual interests.

⁷ *Exchange Parts Co.*, 131 N.L.R.B. 806 (1961), *enforcement denied*, 304 F.2d 368 (5th Cir. 1962), *rev'd*, 375 U.S. 405 (1964).

⁸ *Textile Workers Union v. Darlington Mfg. Co.*, 380 U.S. 263 (1965).

⁹ In *Darlington*, the Court was not clear whether the employer had ceased to exist entirely. Accordingly, the case was remanded to determine whether there were any

In a series of cases decided under sections 8(a)(1) and (3), the Supreme Court has given very narrow scope to section 7's promise of protection to employees in the exercise of concerted activities for better working conditions.¹⁰ Having been reversed many times over the years, the Board has accepted such a narrow reading of the Act's protective provisions.¹¹ As a result, employees may be discharged for slowdowns, quickie strikes, wildcat activities, strikes in breach of collective bargaining contracts, activities which constitute part of a labor organization's violation of the Act, and activities which violate other laws.¹² In

surviving employees who were intimidated by the employer's termination of the employees who selected a union.

¹⁰ *Emporium Capwell Co. v. Western Addition Commun. Org.*, 95 S. Ct. 977 (1975) (wildcat strike to protest alleged racial discrimination is unprotected); *NLRB v. Local 1229, IBEW*, 346 U.S. 464 (1953) (the Act does not protect striking employees who publicly disparage the product those employees helped to "foist" on the public); *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71 (1953) (employee who refuses to cross a picket line is lawfully discharged where contract outlaws strikes and arbitrator interprets the contract to include a bar on employees' honoring picket lines, although contract did not specifically mention the subject); *Local 232, UAW v. Wisconsin Employment Relations Bd.*, 336 U.S. 245 (1949) (unannounced "quickie" strikes are not protected by the federal Act; therefore, the states can regulate such conduct); *Southern S.S. Co. v. NLRB*, 316 U.S. 31 (1942) (employees who strike in violation of the mutiny laws of the United States are not protected by § 7 of the Act, even if the interpretation of the Mutiny Act which makes the strike unlawful was not clear or hardly predictable at the time of the employees' conduct. In this case, as well as *Fansteel* and others, it seems not to matter that the strike was conducted with the apparent authority of the union; the employees still lose their jobs); *NLRB v. Sands Mfg. Co.*, 306 U.S. 332 (1939) (usually cited for the proposition that strikes in breach of contract are unprotected by the Act); *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (1939) (although punished by civil authorities, employees who engaged in a sitdown strike are not protected by the Act, regardless of employer's unlawful conduct which provoked the employees' activities). *But see* *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962) (strike without forewarning by unorganized employees to protest cold working conditions is protected by the Act); *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956) (strike in protest of flagrant employer unfair labor practices is protected activity in the face of a general no-strike clause and despite the fact it occurred during the statutory period provided by § 8(d)(4) of the Act).

¹¹ *See, e.g., Fort Smith Chair Co.*, 143 N.L.R.B. 514 (1963) (union failed to notify the federal mediation and conciliation service as required by § 8(d)(3); accordingly, the strikers were unprotected and were lawfully discharged); *Elk Lumber Co.*, 91 N.L.R.B. 333 (1950) (slowdown to attain higher wages is unprotected activity); *Thompson Products, Inc.*, 72 N.L.R.B. 886 (1947) (employer did not violate the Act by discharging employees who struck to compel employer to recognize a union after the Board had certified another union). Still, over the years, the Board has not been entirely convinced by the Supreme Court's attitudes. *See, e.g., National Packing Co.*, 147 N.L.R.B. 446 (1964), *enforcement denied*, 352 F.2d 482 (10th Cir. 1965), *on remand*, 158 N.L.R.B. 1680 (1966), *enforcement denied*, 377 F.2d 800 (10th Cir. 1967); *Dobbs Houses, Inc.*, 135 N.L.R.B. 885 (1962), *enforcement denied*, 325 F.2d 531 (5th Cir. 1963); *Hoover Co.*, 90 N.L.R.B. 1614 (1950), *enforcement denied*, 191 F.2d 380 (6th Cir. 1951).

¹² *See* note 10 *supra*.

addition to the obvious and severe impact of these cases on the often helpless individual employees, the effect of this narrow interpretation of section 7 is to place restrictions on unions' ability to exert economic pressure upon employers. Often—if not usually—employees engaged in concerted activities for the betterment of their wages, hours, and other conditions of employment are acting at the behest of, or in league with, their collective bargaining agent.

A fallout, or unintended, consequence of having stripped unions of considerable power by this strict construction of the Act may have been a tendency to balance things by giving unions greater strength in other areas than otherwise would be justified. These areas may be, unfortunately, also contexts in which the individual workers pay the major price, rather than the unions being repaid for the loss of their economic strength by interpretations of the Act which would come out of the employers' hides. It is ironic, and perhaps cruel as well, that the employees are the primary victims in an effort to keep employers strong vis-à-vis unions, and that employees are similarly victimized to keep unions strong vis-à-vis employers.

Much of what follows are examples of keeping unions strong. Exclusive representation appears often, if not always, to be the doctrinal cause or justification. While I have made no exhaustive effort to explore the various problems, I do attempt to suggest some better ways to deal with the issues.

A. *Fair Representation*

It is often said that a union, in the representation of employees, should be analogized to a legislature in its representation of all persons.¹³ Like the legislature, the union has been selected by a majority; and like the legislature, it will participate in the creation of laws which will affect all, even those who did not want it to represent them in the first place. To that point, the analogy appears to have some merit, although it is unduly simple and somewhat deceptive. It should not be pushed too far. For example, the union does not decide unilaterally what the new "legislation" will be; the employer must participate and, indeed, in a very real sense remains the one to call the tune. As antiunion employers are fond of pointing out in election cam-

¹³ "For the [bargaining] representative is clothed with power not unlike that of a legislature . . ." *Steel v. Louisville & N.R.R.*, 323 U.S. 192, 198 (1944).

paings, only the employer can put a raise in the employees' pay envelope. And, at least after giving collective bargaining a try, an employer may be able to put that pay increase into the envelope even without the union's agreement.¹⁴ While a legislature passes laws which deal with all walks of life, rarely does it deal with issues of intense and direct interest and effect to all the electorate. Unions do this all the time in reaching agreements with employers about wages, hours, and other terms and conditions of employment.

Moreover, in our society neither the legislature nor its agents represent all people in their individual concerns or grievances with others. Quite to the contrary, people select their own representatives to help in settling individually identifiable interests. Unions, on the other hand, represent all employees in their individual grievances, including the complaints of employees who actively oppose the union or its leadership.

Thus, one can question whether the analogy to the legislature is very useful when dealing with the obligation owed by the union to all the individuals it represents. While it is true the individuals often will have conflicting interests which may be irreconcilable, and that someone has to resolve the competing interests, one may be compelled to conclude that close supervision of the resolver is in order, especially when the decision-maker is an exclusive representative chosen by the majority. This should be clear because the union is not neutral, but is controlled by one employee group or another from among the conflicting interests. It is from this concern, with a possible constitutional basis as well, that the duty to represent all the employees in the unit, the duty of fair representation, found and still finds its bottom.¹⁵

Given the conflicting interests of the many employees in a unit and the expertise of the union, the courts are prepared to defer to the unions' judgment, in most cases, of what cause is best for the most employees. Accordingly, the Supreme Court has told us that the duty of fair representation requires only that the union refrain from acting "arbitrar[il]y, discriminat[il]y or in bad faith."¹⁶ It is not clear to what extent the duty

¹⁴ See, e.g., *NLRB v. Crompton-Highland Mills, Inc.*, 337 U.S. 217, 225 (1949); *NLRB v. U.S. Sonics Corp.*, 312 F.2d 610 (1st Cir. 1963).

¹⁵ See *Steele v. Louisville & N.R.R.*, 323 U.S. 192 (1944).

¹⁶ *Vaca v. Sipes*, 383 U.S. 171, 190 (1967).

outlaws union discriminatory activity based on what are arguably irrelevancies to the union's accepted role,¹⁷ nor whether violation of the duty requires that the union act intentionally to deprive the employee of something he or she has a right to have.¹⁸ Perhaps time will make clearer what the duty implies. In the meantime, it does appear that the doctrine is to be construed narrowly.¹⁹

What is clear, however, is that the concept of fair representation, whatever it means, is a necessary implication of the Act because of one idea in particular: the doctrine of exclusive representation. Without that doctrine, employees would be free to select their representatives without being subjected to a political majority which is unsympathetic to the minority's desires. While I am not so naive as to believe that all conflicts between employees and their representatives would disappear if only exclusivity were jettisoned, conflicts created by individuals' need for fair treatment at the hands of their union could be greatly reduced if exclusivity were abandoned and employees were allowed to be represented by their own individually chosen agents.

Whatever can be said for sacrificing the minority's interests for the good of all, or at least for the majority, the idea makes no sense when the issue is what should be done regarding a single individual's grievance with his or her employer. No longer can it be said that the union is acting like a legislature. In this context, the union is the representative of the individual; it does not suffice to say that even in this context the union must first think of and consider the interests of the majority, or consider what is the best for the most, or that the union must consider as paramount the "proper" interpretation of the collective bar-

¹⁷ The Court said in *Steele* itself that union discrimination within the bargaining unit could not be "irrelevant and invidious." 323 U.S. at 203. While courts have found failures to represent fairly where the basis for disparate representation was deemed "irrelevant," e.g., *Berman v. National Maritime Union*, 166 F. Supp. 327 (S.D.N.Y. 1958); *Brotherhood of Locomotive Engineers*, 116 F. Supp. 3 (D.D.C. 1953), what is deemed "relevant" has a very broad scope. See *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953).

¹⁸ Compare *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (1971) ("[T]he very distinction . . . between honest, mistaken conduct, on the one hand, and deliberate and severely hostile and irrational treatment, on the other, needs strictly to be maintained."), with *Vaca v. Sipes*, 386 U.S. 171, 190 (1967) (mandate that the union refrain from engaging in conduct that is "arbitrary, discriminatory or in bad faith").

¹⁹ See *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (1971). But see Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEXAS L. REV. 1119 (1973).

gaining contract. Those are no longer the issues. The issues now center on the individual's allegations and interests. Moreover, there are opportunities, albeit not unilateral, for the union to amend the contract if an individual grievance is settled in a manner which the union does not want. If the issues were still general, rather than specific, still a matter of unit concern, where could an individual ever find vindication of the legitimate interests that he or she has as a result of the collective bargaining contract and the expectations that the contract has created?

The almost universal fact that the union was opposed by a minority of the employees who now must look to that organization for representation in their individual grievance proceedings compels one to come face to face with a real novelty in our law, to which reference has already been made: An individual is forced to use a representative not of his or her own choosing to settle an individual grievance or complaint. Indeed, the representative may be antagonistic to the employee, either personally or ideologically. Nevertheless, the law tells us that these individuals must be represented by such unsympathetic institutions.

As protection, the Supreme Court has held that the duty of fair representation applies to grievance and arbitration proceedings.²⁰ This might be of some protection if the duty were broadly and clearly defined, but the courts have yet to set forth such an exposition. Moreover, proof of a violation of the duty of fair representation does not make out a successful case against the employer under the collective contract: The individual must prevail on the contract issue as well. The individual probably has to prevail on the contract issue even if the union is the only defendant, because it is difficult to show how the employee has been injured by the union's failure to represent fairly unless there was a contract right at the bottom of the employee's claim.

While this appears to make sense, at least at first blush, it is neither reasonable nor fair that the employee can successfully sue the employer on the contract only when the union also violates its duty of fair representation. After all, if the employee's contract rights were violated, what relevance has the union's behavior to an action between the employee and employer? Nevertheless, in *Vaca v. Sipes*,²¹ the Court held that an individual

²⁰ *Vaca v. Sipes*, 386 U.S. 171 (1967).

²¹ *Id.*

has to prove a failure of fair representation before he or she can sue an employer on the collective bargaining contract. On one level, the Court's reasoning seemed to be that the union and the employer were the parties to the contract (whatever happened to the employees?) and that it therefore followed that the union had to be dissatisfied with the employer's actions and seek redress if any relief was to be had (unless the union acted illegally in its acquiescence, in which case the individual needed protection). On another level, the Court appeared to be saying that the union needed to participate in all grievance settlements because whatever was decided could affect all the other employees whom the union represented.

There is some truth to both levels of analysis, but neither is wholly persuasive. First, the fact that a union does not pursue a grievance does not prove that the union, one of the two parties recognized by the Court, agrees with the other party—the employer. The union may have chosen not to pursue the grievance for reasons which were legitimate, at least for fair representation purposes, but it might still agree with the employee's position on the merits of the grievance. Secondly, while many grievances have elements which may have some impact on other employees, this is obviously a more or less proposition, varying from case to case. Resolution of seniority disputes can affect large numbers of employees, while resolution of a discharge case where the only issue is whether an employee showed up late for work may involve no other employees' interests at all; as a practical matter. While drawing the line is made easier by opting for the idea that other employees' interests and the union's interests are always involved, that hardly comports with the legitimate interests of the grieving employees. Sometimes the grievant's interests far outweigh the union's or other employees' theoretical concern.

Finally, it should be noted that, in the past, the Supreme Court has ordered arbitration in one case although it was plain that one of the parties most likely to be affected would not, and could not, participate. In *Carey v. Westinghouse Electric Corp.*,²² the Court ordered an arbitration between an employer and one union which had a jurisdictional dispute with another union not involved in the litigation or in the arbitration-to-be. What

²² 375 U.S. 261 (1964).

legal impact the required arbitral decision might have on the unrepresented union was not decided by the Court. If the Court can order such an arbitration where it is virtually certain that further litigation or arbitration would be necessary to resolve the matter because an interested union was absent, surely one can have doubts about the sanctity of requiring a union to participate voluntarily when an employee seeks justice from his or her employer. Combining with this the fact that there is often reason to be suspicious of union motivation for refusing to process grievances, especially since the grievant may have all sorts of unprovably bad relationships with union leaders and the leaders all sorts of unprovably hostile motives towards the individual, one must conclude that the *Vaca* solution does not make sense.

A more appropriate, albeit not perfect, solution under the existing statutes is the following:

1. If an employee is severed from employment, he or she is able to sue the employer on the contract without exhaustion of contractual remedies (so long as the employee does not seek reinstatement).²³

2. If the employee has not been severed from employment, or he or she seeks reinstatement as a remedy, the employee has the right to take up the grievance, although not the right to force the union to pursue it.²⁴ If the union chooses not to support the grievance formally, the employee is entitled to a written reason why the union will not pursue the matter; the reason

²³ This once was the law under the Railway Labor Act. *Moore v. Illinois Central R.R.*, 312 U.S. 630 (1941). The Supreme Court first refused to extend *Moore* to Taft-Hartley cases, *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965), and then overruled *Moore* entirely. *Andrews v. Louisville & N.R.R.*, 406 U.S. 320 (1972).

²⁴ See the proviso to § 9(a), 29 U.S.C. § 159(a) (1970), which states: "[A]ny 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." Despite the more obvious meaning of this language, which creates an exception to the purity of exclusivity on behalf of the employee, the usual interpretation given these words is limited to permitting an employer, if it wants, to discuss a grievance directly with an employee. *E.g.*, *Black-Clawson Co. v. Machinists Lodge 355*, 313 F.2d 179 (2d Cir. 1962). It makes more sense to give the individual employee the right to settle grievances. In this fashion, the employee is more apt to be satisfied and the employer is more likely to hear employees' problems. Since the proviso assures the union's presence at the grievance discussions, it is difficult to understand any harm that can befall exclusivity concepts by assuring an individual this limited right. *See, e.g.*, *Donnelly v. United Fruit Co.*, 40 N.J. 61, 190 A.2d 825 (1963). I do not accept the *Donnelly* opinion, however, where it suggests

should set out what efforts the union made to investigate the grievance as well as the reasons for its abandonment. The union must follow reasonable procedures to investigate, and the union is expected to have reasonable grounds for not pursuing the matter. If its motivation was improper (unreasonable or irrelevant), the stated reasons would in no way bind the employee. If the evidence does not support the union's position, or if its reasons for not pursuing the grievance are improper, the employee should be successful in a fair representation action. A fair representation action should be permissible without proof that the employee was correct on the contract claim; it should be enough that the employee lost a chance of winning the contract claim because of the union's mal- or misfeasance.²⁵

3. The employer may be liable to the employee on the contract, even if the union does not pursue the grievance through arbitration and even if the employee is not separated from employment, if (a) the union is guilty of a failure to represent fairly, (b) the union does not agree with the employer's position but has failed to pursue the matter for reasons which do not violate the duty to represent fairly, or (c) although the union agrees with the employer, the union's reasons for not pursuing the grievance do not significantly or legitimately involve the interests of other employees covered by the contract.²⁶

4. The employee should not be required to join the union and the employer as defendants in order to succeed against either.

an individual can even insist upon going to arbitration. This seems, to a considerable extent, a futile gesture for the employee. Moreover, the dilemma of identifying the "parties" to the arbitration may be more trouble than it is worth. Finally, such a doctrine might result in unfair financial burdens. However, as indicated in the text, the individual's rights in the courthouse should be greatly expanded.

²⁵ The fact that paragraph "three" permits the employee to sue the employer on the contract if the union fails to represent fairly should not preclude the employee from suing in fair representation only, and having the damages measured in terms of a lost chance to prevail on the contract issue. In some situations, at least, that chance will not be equated with the merits of the contractual dispute. This will be true especially where the designated interpreter of the contract is an arbitrator, not the courts.

²⁶ It should be noted that the proposal made in the text does not wholly reject some of the institutional interests protected by *Vaca*. If the union's refusal to support the individual is based significantly on the legitimate interests of other employees, e.g., a seniority dispute, I am prepared to leave a real contract issue to the interpretation of the creating parties, the employer and the union. However, there are limits to the rational meaning of words and, beyond that point, the courts should not defer to the parties' contract interpretation when it comes at the expense of identifiable individuals.

5. An employee should never be required to exhaust internal union procedures before suing either the employer on the contract or the union for failing to represent fairly in a grievance context.²⁷

6. If the union does choose to pursue a grievance to arbitration, an individual employee may employ his or her own representative for the proceeding.²⁸

While these proposals would not completely protect legitimate interests of individuals, they would go a long way without abandonment of the exclusivity doctrine.

B. *Board Abstention in Individual Rights Cases*

A few years ago, the National Labor Relations Board reversed its then longstanding practice of virtually never deferring to the arbitral process.²⁹ Much can be said for the NLRB's decision to abstain from deciding a case in which the arbitration process is available to resolve an issue revolving around the authority of the employer to impose "unilaterally" changed working conditions during the term of a collective bargaining contract.³⁰ In such a case, there can be no "unilateral action" if the contract authorizes the employer conduct; any unfair labor practice finding would necessarily turn solely on the meaning

²⁷ A growing body of law is requiring employees in *Vaca* contexts to exhaust both contractual and internal union remedies, even in cases where the employer is the defendant. See Simpson & Berwick, *Exhaustion of Grievance Procedures and the Individual Employee*, 51 TEXAS L. REV. 1179 (1973).

²⁸ Note that the proposal does not authorize an individual to enforce arbitration where neither the union nor the employer seek it. This assumes, of course, that the contract does not authorize individual authority to initiate arbitration. The reason for this apparent omission is primarily a skepticism about an arbitrator's ability to retain an objective and fair stance when his or her "employers," the union and management, are opposed to the arbitration. Even the right of counsel contained in paragraph "six" may not be worth much. Either the union will support the individual, in which case the independent attorney is probably not needed (although his or her presence may assure more competent representation), or the union will not support the claim, in which case the arbitrator's neutrality will be somewhat suspect. (Of course, the arbitrator may not be aware of the union's indifference or animosity to the individual's claim, and the attorney's presence may prevent the union from being open about its true attitude. Moreover, the union's indifference may be reflected in poor advocacy, which the attorney may cure. Alternatively, the arbitrator may treat the presence of such an attorney and everything he or she does with considerable skepticism, given the fact the attorney does not speak for either the employer or the union.)

²⁹ *Collyer Insulated Wire*, 192 N.L.R.B. 837 (1971).

³⁰ See Schatzki, *NLRB Resolution of Contract Disputes Under Section 8(a)(5)*, 50 TEXAS L. REV. 225 (1972).

of the agreement. However, abstention is wrong in cases in which the issue centers on identifiable individuals and their interests in their employment relationship.³¹ Unfortunately, the Board has made no such distinction and has abstained whenever arbitration is available in these types of cases.³² In a typical 8(a)(3) discharge case, for example, the arbitrator deals with a "good cause" provision of a contract, while the Board deals with a federally legislated mandate which does not look to the contract for its meaning. Unlike the unilateral change cases, there is reason to believe in cases involving individual interests that sometimes—perhaps often—the union's interests and those of the involved employees may be different, or even antagonistic. In the non-unfair labor practice case in which the individual seeks to protect his or her own interests by challenging employer behavior, the individual is limited to the meaning of the contract, to some sort of relief authorized by the contract, and to union representation. In unfair labor practice cases the employee can rely upon federal substantive law and remedies and can look to the General Counsel and the Board to protect his or her federal rights. Surely, the assurance of greater impartiality (greater, certainly than an arbitrator or bipartite board that is "controlled" by the union and the employer) is justification enough to have the Board exercise its authority in these cases. Recognizing fully the problems of drawing lines between "unilateral action" cases and "individual interest" cases, I believe it is well worth delineating. It is certainly preferable to the current

³¹ See Atleson, *Disciplinary Discharges, Arbitration and NLRB Deference*, 20 BUFF. L. REV. 355 (1970); Getman, *Collyer Insulated Wire: A Case of Misplaced Modesty*, 49 IND. L.J. 57 (1973); Schatzki, *Earliest Returns from the NLRB's New Deferral Policy in Collyer Insulated Wire*, PROCEEDINGS OF N.Y.U. TWENTY-FIFTH ANNUAL CONFERENCE ON LABOR 97 (1973).

³² For an extreme example of deferral in a layoff case, see *Electronic Reprod. Serv. Corp.*, 87 L.R.R.M. 1211 (1974). The union claimed, among other things, that two employees had been laid off in violation of the federal labor laws. The case went to arbitration and the arbitrator upheld the layoffs without making any reference at all to the claim of unlawfulness. Apparently the employer had urged the arbitrator to determine the statutory issue, but the union refrained from pursuing the issue or putting supporting evidence into the record. Regarding the unfair labor practice charge, the NLRB deferred to the arbitration award although there was no evidence the issue was ever litigated in that forum. The inference to be drawn from this case is that although the contract and statutory issues are different, the union's interests may not coincide with the individuals', and the statutory issue was in no way litigated or determined, the Board will deprive these individual employees of their statutory rights under the guise of deferring to and encouraging arbitration. One's mind would need to be very fertile, indeed, to conjure up a more shocking sacrifice of individual rights on the altar of institutionalism.

assumption that the collective bargaining process will always provide individuals with adequate and fair process.

Many of the problems created by the Board's abstention appear to be a product of the exclusivity doctrine, just as the *Vaca* problems are. That is, the Board is prepared to defer to the collective bargaining process in the hope of encouraging that institution, a worthy goal indeed.³³ However, the unspoken premise is that the exclusive representative will do its best for all individuals, regardless of the nature of the dispute or the identity of the involved workers. This belies common sense. It is true that the Board has set up some guidelines which are meant to protect against abuses by unfriendly exclusive bargaining representatives; but the *Spielberg* doctrine's criteria are more defective than the limited protection given the individual by the duty of fair representation.³⁴ No one has any difficulty making an arbitration decision appear to be fair and consistent with the substantive provisions of the Act, especially when one of the parties of real interest—the individual—has no control over the nature of the proceedings, the selection of the “neutral,” the presentation of evidence, or his or her “representative.” Would the assumption of regularity be fairer and comport more often with reality if we knew that the individual employee, in fact, wanted the particular union to represent him or her?

C. Preemption Problems

The idea of using the federal labor laws to preempt state and federal courts from hearing cases arising in labor relations contexts is well established and well discussed, although not altogether clear. Whatever the scope of preemption in the labor law area, it is accepted dogma that fair representation cases are exceptions to the preemption doctrine.³⁵ However, in the Supreme Court's last effort in the preemption field in which individual employee rights were in issue, the Court's majority

³³ See *Electronic Reprod. Serv. Corp.*, 87 L.R.R.M. 1211 (1974), where almost the entire analysis of the Board opinion centers on encouragement of arbitration, part of the collective bargaining process, no matter what the cost to individual employees.

³⁴ *Spielberg Mfg. Co.*, 112 N.L.R.B. 1080 (1955) (the Board will defer to an arbitration award in a discharge case if the hearing was fair and the award was consistent with the policies of the Act). Doesn't *Electronic Reproduction* undo whatever rationale there was for *Spielberg*?

³⁵ See, e.g., *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 299 (1971).

made it clear that the fair representation exception to preemption should be construed narrowly.³⁶ Indeed, the Court went to considerable effort to vindicate the preemption precedents, especially the famous *Garmon* decision,³⁷ even as applied to cases involving individuals' interests, whether the plaintiff was suing in fair representation, on the collective bargaining contract, or on the union constitutional contract. In *Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Lockridge*,³⁸ an employee was discharged from his job at the request of the union. The collective bargaining contract provided that employees who did not remain members of the union could be discharged for that reason. The union's constitution provided that a member was in bad standing if he was more than one month in arrears of dues payments and that he was to be suspended from membership if he was two months in arrears. The union successfully requested Lockridge's discharge after he was only a few days more than a month in arrears. The apparent, or at least possible, motive for the quick action against a longtime employee and longtime member was that Lockridge had recently withdrawn his checkoff authorization. Eventually, the Supreme Court held that the state court did not have jurisdiction to hear Lockridge's complaint, since the National Labor Relations Board's jurisdiction preempted all else. In effect, the Court held that the general needs of the Act, more or less left undescribed in the opinion, must be vindicated at the expense of protection of individual workers. Is not the federal policy to which the Court obliquely referred the need to protect the union's countervailing power and, therefore, the institution of exclusivity, which is fostered by federal law and better appreciated and protected by the federal agency?³⁹ In the process

³⁶ *Id.* at 301.

³⁷ *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). The *Garmon* case articulated the standard for preemption that the *Lockridge* Court appears to have applied: No conduct either protected or prohibited by the Taft-Hartley Act, or arguably protected or prohibited by that law, can be regulated by state or federal courts. However, one should note that *Garmon* did not involve an individual worker attempting to vindicate his or her rights; rather, it was a case in which an employer attempted to enjoin a union's picket line.

³⁸ 403 U.S. 274 (1971).

³⁹ In a footnote, the majority suggested of Justice White's dissenting opinion, "At bottom, what his opposition seems to imply is that giving the National Labor Relations Board jurisdiction to enforce federal law regulating the use of union security clauses was largely, if not wholly, without rational purpose." *Id.* at 288 n.5. The majority rejected Justice White's attack on this manifestation of exclusivity, thus preserving the doctrine in its pristine form.

of upholding exclusivity, the Court gave no weight whatsoever to the substantive and procedural interests of the individual worker, interests which Justices Douglas and White articulated in their dissents. For example, can it be argued rationally that if the General Counsel did not issue a complaint on a *Lockridge* charge primarily because of budgetary priorities, Congress desired to foreclose a *Lockridge* from any remedy? How could the Court decide the case without at least attempting to resolve or balance the competing substantive interests? Is the union's countervailing power threatened if *Lockridge* can sue in the state courts?⁴⁰ The decision appears to be another example of adopting the logical and extreme consequences of exclusivity without taking into account the conflicting needs which create the disputes in the first place.

There are several alternatives to the result reached in *Lockridge*. Some need legislative support. All have some weaknesses. But perhaps most importantly, they give needed added protection to the individual caught in Mr. *Lockridge's* dilemma, to wit, being kicked out of the union for alleged tardy dues and thereby losing his job as well. The alternatives, without much effort to describe the advantages and disadvantages of each, are the following:

1. There should be no preemption when an individual employee is the plaintiff (one can be skeptical about what significant harm to the legislative purpose would be done by such a standard);

2. Cases which are at the "core" of the Act should be preempted, but no others (it is difficult to see *Lockridge* at the core of the Act, especially if one accepts the Court's insensitive view of the individual's interests);⁴¹

3. The concept of fair representation should be expanded, keeping in mind that it continues to be an exception to the preemption doctrine and that it is a federal question which can always be heard in the federal courts, which should be more

⁴⁰ The real basis for the Court's decision may be nothing more than distrust of state courts and the latter's possible bias against labor unions. The Court did express its concern that state courts may impose all sorts of outrageous remedies which could upset the balance attempted by Congress. *Id.* at 288-89 n.5. But wouldn't the possibility of removal, which surely would be available in fair representation cases, be adequate protection from that abuse? See Bryson, *A Matter of Wooden Logic: Labor Law Preemption and Individual Rights*, 51 TEXAS L. REV. 1037 (1973).

⁴¹ See Cox, *Labor Law Preemption Revisited*, 85 HARV. L. REV. 1337 (1972).

protective of, sympathetic to, and understanding of federal legislation than state courts might be;⁴²

4. The role of the courts in reviewing the General Counsel's dismissal of charges filed in his office should be expanded (this, at least, would give the individual charging party some review of what is now a wholly unreviewable process and, probably, a process which often dismisses cases for administrative convenience rather than on the merits);⁴³

5. The Board should be authorized to issue declaratory judgments regarding rights under the Act (somewhat like Internal Revenue Regulations) (while there are some difficult procedural problems with this solution, the proposal might make clear, sometimes, that the Board does not have jurisdiction in a particular case, thereby freeing the individual to go to the courts);

6. The charging party, at least if he or she is an individual worker, should be allowed to litigate before the Board, whether or not the General Counsel issues a complaint;

7. The individual charging party should be allowed to litigate before the court if the General Counsel does not issue a complaint.⁴⁴

Any of these would have been better than the treatment Lockridge actually received.

D. *Union Disciplinary Action Against its "Members"*

May a union fine a member for crossing a picket line or violating some other work-related internal union rule? May the union sue to enforce the fine? Or do such actions constitute violations of section 8(b)(1)(A) of the Act, which forbids unions from restraining or coercing employees in the exercise of rights granted by the Act? Should it matter whether there is a union shop in effect, which compels some sort of "allegiance" to the union? The Supreme Court has held, by and large, that the

⁴² See Bryson, *supra* note 40; Clark, *supra* note 19.

⁴³ But see Lesnick, *Preemption Reconsidered: The Apparent Reaffirmation of Garmon*, 72 COLUM. L. REV. 469, 484 (1972). Professor Lesnick appears to reject the idea of judicial review of General Counsel dismissals, but urges reform of General Counsel procedures to protect individuals. While his proposal is desirable, I doubt that it would accomplish very much in terms of protecting individual workers.

⁴⁴ It is also possible that there should be no preemption if the conduct under review is only arguably protected or arguably prohibited by the Act. While such a revision of the *Garmon* doctrine would undoubtedly protect many more individuals, the change would also have considerable impact on preemption generally and in ways that, at least for the present, I am not prepared to endorse.

union can do all of this, even in situations in which there is a union shop provision in the collective contract which requires "union membership" in order for the employees to retain their jobs.⁴⁵ It is true that sophisticated lawyers know that employees do not have to become real members in order to retain their jobs in shops which have union security clauses: all the employees need do is tender dues and fees uniformly required of all union members. However, the statute does not read quite so clearly, and it would not be surprising for employees, most of whom have never read the law, to believe that they must join the union in order to keep their jobs. Moreover, many employees are going to feel intimidated into joining the union in order to avoid having the union prejudiced against them when it comes to questions of their work status. Finally, employees are coerced (induced?) into joining their exclusive representative because, once having the union imposed upon them, they might as well join and have some voice in selecting their spokesmen and in determining what policies the union should follow. The fact that these employees receive some "quid pro quo" for joining hardly changes the fact that they might prefer another (or no) union, or that they may be unpopular within the union because they either opposed the union or oppose the current internal union policies. They have joined the union either because they feel the law requires it, or because the practical consequences of being represented by the union (not of their choice) require it (whether or not there is a union security clause).

⁴⁵ *Scofield v. NLRB*, 394 U.S. 423 (1969) (in the presence of an agency shop clause, a union does not violate the Act by fining and suspending members for producing more work than permitted by a union-imposed ceiling); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967) (in the presence of a union shop clause, a union does not violate the Act by fining and suing members for crossing a lawful picket line). For purposes of the Act, it is irrelevant how exorbitant the fines may be. *NLRB v. Boeing Co.*, 412 U.S. 67 (1973).

There appear to be some statutory limits on a union's ability to fine its members. *NLRB v. Granite State Joint Board*, 409 U.S. 213 (1972) (a union violates the Act when it fines members for abandoning a strike, although those same employees voted to strike and to fine members who did not strike, because the fined members had resigned from the union prior to returning to work. Would a provision in the union's by-laws or constitution which forbade members from resigning during a strike be a good defense for the union? One cannot know, although the Court's opinion seemed to rely heavily on the absence of such a provision.); *NLRB v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (1968) (unfair labor practice for a union to expel a member for filing an unfair labor practice charge against the union alleging that the union had earlier caused an employer to discriminate unlawfully against the employee; this case can be read as merely protecting the process of the Act, rather than the individual employee).

Despite the obvious reservations anyone should have about the voluntariness of the employees' membership in the union, the Court has upheld union discipline of these employees for crossing picket lines or violating other work rules which had no substantive basis other than that the rules reflected what the union thought was desirable. If the membership was not voluntary but, rather, a product of exclusive representation, should not the Court forbid the union's enforcing its rules in a manner which affects the employees' job opportunities? To put it differently, if employees do not want to strike, does not section 7 indicate that such a decision is protected by the Act? If so, how can anything less than an individual's voluntary abandonment of his or her section 7 rights be considered an adequate waiver of those rights by the individual?

If the Act clearly stated that employees did not have to join any union, and that they would never be represented by any union other than one of their individual choice, then one would have more sympathy with the Court's conclusion that a union ought to be able to fine its members for not abiding by union rules. That is not the law, however. The Court's decisions constitute another example of vindicating the institution of exclusive representation at the expense of individual employee interests.

E. *Wildcat Strikes*

In some situations, employees who are dissatisfied with their working conditions will strike even though they are represented by a union which has not authorized the strike action. The union's failure to support the individuals' action may be due to disapproval, indifference, inability, inactivity, ignorance, or timidity. The individuals' action may be inconsistent with the union's substantive positions, plans, or tactics. Unless the union quickly makes plain its support of the action, thereby ratifying the employees' conduct, the employer will likely find itself dealing with two groups (the strikers and the union) rather than the one designated as the exclusive bargaining representative.

It is not surprising, then, that the Board and the courts have looked upon wildcatting as undesirable. Having reached that conclusion, these institutions followed with the principle that such activities are not protected by section 7 of the Act.⁴⁶ That

⁴⁶ See, e.g., *Emporium Capwell Co. v. Western Addition Commun. Org.*, 95 S. Ct.

is fully consistent with those institutions' proclivity to deny protection of the Act whenever there are any legitimate institutional considerations competing with the protection suggested by section 7. In wildcatting cases, the argument for giving the employer the opportunity to punish employees is twofold: First, the union almost surely is not supporting the individuals and, therefore, it cannot be said that the employees are the innocent pawns of the union; second, the employees' conduct, almost by definition, upsets the exclusive nature of the collective bargaining agent's role in its dealing with the employer and the concomitant interest of the employer in relying on that exclusive agent. Of course, the second reason is the key, for without it the first reason would not justify any remedies for the employer. The first reason assumes that there is something "wrong" with the employees' conduct, and that ingredient is supplied by the activity's interference with the exclusive representative's role and the employer's interest in relying on exclusivity.

The difficulty with all of this, however, is that employees may not have their legitimate interests vindicated by traditional collective bargaining. Their behavior reflects sufficiently deep-seated unhappiness with certain working conditions (and, sometimes, with their union) that they are prepared to engage in this disruption without any institutional support and perhaps with the union's opposition.⁴⁷ If they do not engage in this form of disruption, the employees may well engage in other sabotage of the employer's business, such as slowdowns, destruction, and sloppiness. It is not clear that wildcat strikes produce greater inefficiencies than those employee responses. Thus, reliance on the exclusive representative concept may often result in greater inefficiency as well as in dissatisfaction with working conditions which, from the employees' point of view, reflect employer interests but not those of the employees.⁴⁸

While wildcatting highlights the fractionalized nature of the collective bargaining unit, it does not create it; these units already suffer strong and bitter fractionalization, or there would

977 (1975); *Lee A. Consaul Co. v. NLRB*, 469 F.2d 84 (9th Cir. 1972); *Plasti-Line, Inc. v. NLRB*, 278 F.2d 482 (6th Cir. 1960); *NLRB v. Draper Corp.*, 145 F.2d 199 (4th Cir. 1944); Atleson, *Work Group Behavior and Wildcat Strikes: The Causes and Functions of Industrial Civil Disobedience*, 34 OHIO ST. L.J. 751, 755 (1973).

⁴⁷ The union may approve of the activity but, for various reasons, feel that it cannot say so.

⁴⁸ See Atleson, *supra* note 46.

not be such open defiance of authority. To avoid such consequences, and to hold the unit together, collective bargaining often reflects the split personality of the bargaining unit, and certain subgroups may be given unusual powers within the unit to determine collective bargaining postures for the union.⁴⁹ Is it clear that the wildcatting greatly exacerbates the situation when subgroups do not have this power? Moreover, may it not be the case that wildcatting helps the weaker elements of the employees who do not have a sufficient voice within the union to have their views aired, pursued, and struggled for by the union? May not wildcatting give some cathartic release to these frustrated employees, who may work more efficiently and less resentfully after the strike? Finally, is it not true that only the strong employer can take advantage of the law which permits it to discharge wildcatters? Weak employers have no choice but to put the employees back to work. To the extent, then, that the law has developed to protect employers' interests, it makes very little sense, because it helps only those employers who need it least. To the extent that the nonprotection of wildcatting is to discourage employees from engaging in such activities, the inclination of employees to find other ways to subvert the employer's efficiency seems sufficiently likely to make effective deterrence an unlikely objective. Finally, if the law has developed to protect internal cohesiveness of the collective bargaining unit, the fact that fractionalization of the bargaining unit is not new or unique and is a problem with which unions must wrestle all the time, especially given the union's role as the representative of all the employees in a particular unit, dictates that wildcatting is not such a serious problem.

⁴⁹ Article 19, § 3 of the constitution of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (1974), provides in its second paragraph:

Upon application to and approval of the International Executive Board, a ratification procedure may be adopted wherein apprenticeable skilled trades and related workers, engineers, and technicians would vote separately on contractual matters common to all and, in the same vote, on those matters which relate exclusively to their group.

While this provision has not been interpreted to give skilled workers a veto power over ratification of a proposed contract, the constitution assures that skilled workers do have separate recognizable interests which may, under some circumstances, receive formal recognition by the union and may affect the union's bargaining stance. For a current interpretation of article 19, § 3, see *Poszich v. International Union, UAW No. 316* (UAW Public Review Board 1974).

To the extent that the competing interests in a wildcat context present a difficult problem under current law, most of the difficulties are caused by the exclusivity doctrine.

F. *Union Security Clauses*

In the debates over the Wagner Act, unions fought very strenuously for the exclusivity concept.⁵⁰ Having prevailed, the unions argued during the Taft-Hartley debates, and often afterwards, that the "right-to-work" attacks on union security clauses were misplaced because the unions had the burden of representing all the employees in a unit, and there should be no "free riders."⁵¹ How curious that the unions should fight so vigorously for the "burden" of representing people who do not want the union to represent them, but then should argue for fair payment by these dissidents. Of course, the two positions can be reconciled by pointing out, if it is true, that the labor organization can more effectively represent employees (even those who oppose the union) if the majority principle is invoked. That responsibility (or "right," if you like) having been established, there is no reason to excuse beneficiaries of the union's work because these individuals did not want the union in the first place—they still are beneficiaries.

While this reconciliation of the union posture may satisfy, it does so only if one is convinced that, because of exclusivity, the unions accomplish a sufficient amount for the employees to justify the clear cost of the loss of freedom for the individual dissenters. In a sense, that is the question I raise by this Article: Do unions accomplish enough because of the exclusivity concept to justify its considerable interference with the individual employees' freedom?⁵²

G. *Conclusion*

Having attempted over the years to understand why the law has developed in a fashion which deprived individuals of so much freedom and protection in the collective bargaining rela-

⁵⁰ See Weyand, *Majority Rule in Collective Bargaining*, 45 COLUM. L. REV. 556, 565-67 (1945).

⁵¹ See, e.g., 2 LEGISLATIVE HISTORY OF THE LMRDA 1040-41 (1959) (remarks of Sen. Moss). See also 113 CONG. REC. 140 (1967) (remarks of Rep. Rhodes).

⁵² A sibling of the concept of the union security clause is the exclusive hiring hall, which becomes the sole (or, the first and primary) source of labor for employers in certain fields, especially the construction and longshore industries. For

tionship, I have come to the view that the Board and the courts have misunderstood the appropriate dimensions of the exclusivity doctrine. One way to undo the mischief, obviously, would be wholesale reversals and modifications of the case law. That is implicit in Part I of this Article. That remedy, however, seems very unlikely; others have already made that pitch, but to no avail. Alternatively, why shouldn't exclusive representation be abolished through legislative action? I have found it difficult to answer this question. Since I am neither a philosopher nor an economist, the suggestion is being made here with some trepidation. However, the following proposal is made with the hope that it will stimulate more thought about the virtues and vices of exclusivity.⁵³

II. A PROPOSED MODEL FOR COLLECTIVE BARGAINING WITHOUT EXCLUSIVE REPRESENTATION

The keystone of a model of collective bargaining which did not allow majority rule to determine the bargaining agent would be the principle that every employee could select his or her own representative, if any. No one would be represented by a labor organization unless it was actually selected by that individual. Second, the employer would be obligated to engage in good faith collective bargaining with each of the collective bargaining agents authorized by that employer's employees.⁵⁴ Third, the unions could engage in coalition or cartel bargaining, and the employer would be required to bargain on that basis.

a comprehensive examination of the pluses and minuses of such arrangements, see C. SUMMERS & H. WELLINGTON, *CASES AND MATERIALS ON LABOR LAW* 911-69 (1968). After reading the account, can anyone conclude other than that the interests of individual workers have been sacrificed for the interests of employers, of unions, and, only possibly, of some employees?

⁵³ The concept of exclusivity is quite unique to the American experience. Why this is so is speculatively explored in Bok, *Reflections on the Distinctive Character of American Labor Laws*, 84 HARV. L. REV. 1394, 1425-30 (1970), and Summers, *American and European Labor Law: The Use and Usefulness of Foreign Experience*, 16 BUFF. L. REV. 210 (1966).

⁵⁴ The proposal does not suggest that an employer can choose to ignore the employees' designated representatives. The general concepts of unlawful attempts to deal directly with individual employees would not be significantly changed. See *NLRB v. Katz*, 369 U.S. 736 (1962); *NLRB v. Crompton-Highland Mills, Inc.*, 337 U.S. 217 (1949); *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342 (1944); *J.I. Case Co. v. NLRB*, 321 U.S. 334 (1944). See generally Schatzki, *The Employer's Unilateral Act—A Per Se Violation—Sometimes*, 44 TEXAS L. REV. 470 (1966).

The proposal does not include any suggestion that employers would be freed of the sanctions of sections 8(a)(1) and (3) of the Act. Indeed, those sections, which have been the bulwark of the Act—at least when interpreted correctly—would be of increased importance to protect the employees' selection of the unions they desire.

In all likelihood, it might be necessary to limit how often employees could switch their allegiances from one union to another. It would also be necessary to devise a mechanism to inform the employer which employees belong to what unions. Those, I believe, are relatively unimportant problems.

A union would be free to refuse altogether to represent any employees of a single employer, but once the union agreed to represent one or more employees of an employer, it would not be allowed to refuse membership to any employee of that employer, nor to refuse to represent any employee of that employer.⁵⁵ Moreover, there would be nothing illegal about a union requiring any employee it represents to join that union. The sanction for not joining the union which represents someone, however, would be merely to exclude the individual from the right to the contractual benefits of the collective bargaining process in which that union engages.

Very briefly, this is the model I propose be considered for nonexclusive representation of employees represented under the National Labor Relations Act. It is not meant to be complete, although a sympathetic reader could undoubtedly fill in the gaps.

A. Benefits to be Derived from the Proposal

While much of what I have to say in this section is all too obvious in light of what has already been said about the present state of the law, I trust the reader will bear with me. Also, I hasten to add at the outset that much of what I have to say about the potential gains and drawbacks of my proposal is, at best, speculation based on little or no empirical evidence. With that caveat (or admission), the following describes briefly what I believe may be gained by eliminating the exclusivity doctrine.

⁵⁵ Perhaps a union could refuse to extend its representation beyond certain geographical limits, even though the employer had employees outside a particular geographical area.

First, I contemplate a system in which the relationships are much more voluntary than they are at the present time. An employee will be neither represented by, nor coerced into joining, any union other than one that that employee wants. The consequences of this form of voluntarism may be many.

Employees who have the free choice to select and join a union are more apt, I think, to participate in the inner workings of their union. It is my judgment that a better form of union democracy is attainable under my formulation, at least if one understands greater participation to be "better." Wholly apart from anyone's vision of whether that is a good goal, the consequences of greater employee participation in union activities should increase union sensitivity to the individual employee's problems, since he or she will be more likely to partake, thereby increasing both the union's knowledge of employee interests and the political force of those employees within the union. The speculation that there will be increased participation is buttressed both by the likelihood that unions will be more sympathetic to special needs and interests of their respective memberships because they were selected, to some extent, for just that special sensitivity or interest, and because the unions may compete with one another for the allegiances of the employees.

While it is difficult to speculate with any sense of assurance what the nature of the local unions would be, it is possible that some locals would be smaller and likely that most would be more homogeneous, at least in terms of employee interests. In either event, it is likely that an individual would feel more at home and more encouraged to participate in the inner workings of the union. He or she would have more control of his or her destiny.

Employees would have control over the question whether they would be represented by one of possibly several unions. What those unions stand for, what interests they look out for, what zeal they demonstrate when protecting employees, all may have some impact on the employees' choice. The employees will be able to choose the unions which emphasize interests appealing to them. If an employee is interested in a union which advocates long vacations, he or she can select accordingly. If the employee wants a union that is zealous in pursuing grievances rather than wage increases, the selection can be made on that basis. If the employee wants to belong to and be represented by a union that is interested in skilled workers, that option would

be available. And if the employee wants to select on the basis that the business agent is good looking, or that the politics of the union president are appealing, he or she can do that, too. But, in the end, the employee may well select a union which best represents—at least as the employee sees it—those individual interests about which he or she cares most.

The mere fact that employees do not have imposed upon them a union not of their own choosing may well cause them to be happier, more serene people. Happiness in employment is a significant goal in and of itself. Moreover, this mental state should result in more productive, less disruptive employees.

While the possible impact on the individual would be very significant, the speculated change in union conduct would be at least as important over a substantial period of time. Most obviously, unions would be forced to compete with each other in a manner that has not been present, by and large, under the present monopolistic doctrine of law. If unions wanted large memberships and a stronger opportunity to have their will accomplished, they would have to do better than win the hearts of a bare majority of the employees. If a union wanted to represent all, it would have to persuade all employees of its desirability. Faced with competition, which might become ever present, unions would attempt to be more aggressive in representing employees than has been their wont.

Just as employees will want to belong to and participate more in freely chosen unions that support their own interests, unions will respond more affirmatively to members who joined willingly, who have interests in common with the union, and who participate more fully in the union. In such a situation, the union almost surely will be more responsive than is the case today.

In the collective bargaining process, the presence of several unions would assure that more points of view get to the employer. Under the present state of collective bargaining, most of the compromising of competing employee interests is worked out within the union—sometimes for what we deem good and proper reasons, sometimes for reasons less likely to survive careful scrutiny. If the unions could no longer rely on exclusivity, each union which represented a segment of the employees of any employer would, after a period of time, present most forcefully the interests of all the employees it represented. Rather than being swapped out before the employer hears them, the interests would be aired, would have a professional advocate describing

their worth, and would be called to the attention of the employer. While nothing is guaranteed, I suspect, first, that the interests are more likely to be vindicated, and second, that any frustration on the part of the employees will be lessened by the fact that they had a fuller hearing of their complaints than under the present system. (At least the boss heard the pitch.)

Consistent with the proposal, also, is the idea that the union is going to work harder and with more insight to win individual grievances. This is true for several reasons: the union and the individual employees are more closely identified in terms of their mutual interests and concerns; the individuals are more likely to be involved in union activities and therefore are going to constitute a more real internal-union political force; and the union will want to put on a good face, not only for those employees who have already selected it as their collective bargaining agent, but also to impress other employees that this union is the union to which they should belong.

I have one further observation about how the union is apt to act. In general, my impression is that under the present system (which includes exclusivity), unions are more responsive and more likely to be sympathetic and understanding if the individual who has a complaint or grievance is already a union member, preferably a "good" union member. While my proposal does not guarantee that all employees will be good union members, it does assure that unions will know that all the employees the union represents are willing members; I think that, by itself, will improve representation. To the extent that the individuals are more actively involved in the union, representation will be further improved.

While one cannot foresee the full scenario that would follow a change in national labor laws consistent with the proposal, one could guess that over a period of time employees would be likely to see more unions in action. If this were to come about, it would give the employees a more knowledgeable choice of which union, if any, they wanted representing them. I suspect that for many employees, it would be the first comparative shopping they have ever had an opportunity to engage in.

In Part I of the Article, I explored some areas of law which turn, in great part, on the exclusivity requirements of the present statute. Most of the legal problems discussed there would either no longer exist or would be greatly alleviated by abolition of the exclusivity doctrine.

For example, the most severe problem raised by unions fining members for crossing picket lines is that the "members" may belong to the union only because they believed they had to do so, or believed that since they had to pay the union what members paid, they might as well get the benefits of membership. If exclusivity were abolished, it would still be true that employees might feel that they ought to join a union because the benefits from joining justified doing so. From that, one might argue that employees were still being coerced into either taking the bitter ("waiver" of the right to cross the the picket line) with the sweet (benefits of union membership and representation) or eschewing both; but the argument that employees are compelled to join unions is greatly reduced when they have a choice and understand that they have that choice. I think that is a distinct advantage over the present situation, in which the employee has, as a practical matter, no choice at all.

As I have already indicated, the problems reflected in the *Vaca*-type cases would also be greatly alleviated because, with unions made up only of willing and participating members, the unions might make a greater effort than they are presently inclined to, at least in some cases. Perhaps more importantly, we no longer would have employees being represented in their individual claims by a union often not of their choosing and, possibly, antagonistic to them or their claims.

Similarly, the proposal would remove much, if not all, of the doctrinal underpinnings of the fair representation requirements. While I think, for the reasons I have stated, much of the need for the concept would disappear with removal of the exclusivity doctrine, I also think for reasons explained earlier—that is, that unions ought to be held liable for their wrongful behavior, even in relation to employees who joined the union willingly—some remnants ought to be kept. This is especially true because I have suggested that once the union is willing to represent some of the employees of the employer, it must agree to represent all employees who want to join it. Whether the doctrine of fair representation would continue to find its bottom in the constitution or in contract/agency law is not terribly important.

Presumably, if employees select the union they feel will best represent the interests they value most, and if the employees feel that the union is, in fact, representing their interests better, there will be less wildcatting. The problems which both cause and are caused by wildcatting should be severely reduced;

happier employees are less likely to upset everyone with their independent, disruptive behavior.

While the purpose of my proposal is to give individuals some freedom in the selection of their representative and thereby to avoid some of the unfortunate consequences of forced representation, another benefit would be to eliminate the need for the government to involve itself in notions of the appropriate unit and elections. Apart from the saving to be realized in time, effort, and money by relieving the Board of the necessity of studying units and conducting elections (a job which, in many aspects, defies rational demarcations), the employee will be assured of representation by his or her chosen collective bargaining agent regardless of the identity of the employer. For example, in these days in which mergers, sales of businesses, and the like are more frequent than ever, the complexities of the successor problem are rapidly becoming an impediment which will preclude any rational predictive or coherent patterns. Without the need for unit determinations, and with no elections to determine majority preferences, an employee can assume that the union of his or her choice will follow whatever change occurs in the employer's identity, unless the employee properly indicates otherwise. The very difficult problems currently faced by the Board and courts would be either eliminated or vastly alleviated. Consistent with the thesis of this proposal, the representative would follow the employee's individual choice and not the majority's; nor would the representative's role be determined by either the employer's identity or its structure. In a sense, the employees, rather than the Board, would determine the commonality of their interests.⁵⁶

Skepticism about how rationally employees select unions in any event is appropriate; but to the extent they are in a position to make comparative judgments about the unions performing in their shops, they will better be able to select the union which is most likely to perform as each individual would want. And, of course, conversely, given this ability on the part of the employees to witness and assess, at least to some extent, the per-

⁵⁶ The suggestion that a union could limit its jurisdiction on the basis of geography, see note 55 *supra*, has within it some aspects analagous to the current "appropriate unit" law. However, even if the proposal were to allow a union to limit its representation to a certain geographical area (or, possibly, to a single plant of an employer), the problems of appropriate unit, as they exist today, would still be greatly lessened.

formance of the unions, it is not unreasonable to assume that the unions will make greater efforts to satisfy the needs of the employee. Finally, the freedom of the employee to change unions if he or she is dissatisfied is increased by the proposal; the individual does not have to persuade or wait for a majority switch.

B. *Possible Drawbacks of the Proposal*

Having already conceded that my proposal is not being made with any assurance that it is better than other possible remedies for what I see as a developing body of law which ignores the interests of the individual workers to an unjustifiable extent, I shall now attempt to set out what I feel are the major potential difficulties with the proposal and why I am not persuaded that they justify jettisoning further consideration of the idea of non-exclusive representation.

1. Solidarity Forever—Is It a Myth?

At the time of the passage of the National Labor Relations Act, union advocates and economists argued strenuously to Congress that the exclusivity doctrine was a "must" if the Wagner Act was to work.⁵⁷ Their theory, in short, was that the employees had to present a united front to the employer or they would compete with each other and undo each other's efforts to improve their lot. It is difficult to gainsay the idea that if the employees do not work together, but undercut each other's efforts, their chances of improving their conditions are not as great as if they worked in complete unity. However, why has it ever been assumed that all the employees would hang together merely because the law imposed an unwanted union on what was often a substantial minority? If that was not the assumption, and it seems to me that it is not a very realistic one, how was a union charged with representing all the employees to be more powerful, vis-à-vis the employer, in collective bargaining? Nevertheless, the two extreme scenarios contemplated by the supporters of the exclusivity doctrine must have been the following.

First, under the law as it has developed, all the employees are represented by one union. Collective bargaining occurs. The employer, faced with an employee complement which is unanimous in its support of any action of the union, will reach agree-

⁵⁷ See Weyand, *supra* note 50.

ment with the union, or all the employees will go out on strike. Thus, solidarity in the workers, presumably caused by or tied in some way to the statutory mandate of majority rule and exclusive representation, works its effects upon the employer.

Second, without exclusive representation or an election, each employee designates the union of his or her choice or designates no union at all. Each union or individual then negotiates with the employer (or, a representative committee of all the involved unions negotiates). Of course, each union does not have the allegiance of any employees other than those it represents. The economic pressure which it can bring to bear is limited to the impact those employees can create by their strike or threat of striking. Since all the employees will not strike, the impact of the strike will be less, and the employee gains will be less. Put differently, if some of the employees are willing to work for, say, \$2.50 per hour and have union X representing them, how can employees who perform the same kind of work get \$3.00 per hour by negotiating through union Y? Don't the ones working for \$2.50 undercut the effectiveness of any strike by their more ambitious colleagues?

Based on these two scenarios, it is argued that only exclusive bargaining can give employees hope of improving their status. I confess that I am not sure that there is not some truth to the scenarios and that the doctrine of exclusivity does not protect employees just as its most avid advocates claim. But I remain skeptical.

In cataloguing the types of individuals who will or will not support the union which represents all of them through majority rule, one can group the employees into four categories. First, there are the supporters of the union. Second, there are those who prefer another union but who will accept and support, as a second choice, the union imposed by the majority. Third, there are those employees who are coerced, either illegally or through the atmosphere of the workplace and their own misunderstandings and imaginations, into supporting the union. Finally, there are those who will not support the union. Of course, these categories are oversimplifications. For example, while some employees support their unions blindly, many will give their support on a more discriminating basis. The generalizations are intended to serve only as a guide for appreciating what the exclusivity doctrine gains for all the employees.

Little needs to be said about the employees who support the union. Presumably, exclusivity gains no strength for the union vis-à-vis those employees. They will support the union whether it is the exclusive representative or merely their own representative.

If given their choice, some employees would support several other unions rather than the one selected by a majority, but they would also support any union—or at least more than the single union which would be their most preferred—if they could not have their first choice. But no one knows how many employees are of this ilk. My own sense is that there are probably relatively fewer persons today (than in 1935) who support the labor movement *carte blanche*, than those who give their support to one or a few select unions only. In any event, to the extent there are persons who will support a union other than the one they want most, the exclusivity doctrine gives a single union more strength in bargaining than does my proposal, which would obviously fracture support. Of course, it is possible that pursuant to my proposal, these employees who would support any union (or at least more than one) would continue to support unions other than their own through economic weaponry, such as honoring other unions' picket lines. The extent to which exclusivity increases this support is problematic.

Employees who may not be sympathetic to the majority union may still join the union because they are afraid not to. The coercion may find its roots in actual union behavior or only in the employees' imaginations. It matters not for the purposes being considered whether the employees' fears are real or imagined. These employees are not willing supporters of the union and should not be characterized as a group of the union's supporters whose continued existence should be legitimized by the law. To the extent my proposal reduces this coerced support, we should not be concerned.

Finally, as for the group which disapproves of the majority union that is currently the exclusive representative, I think it unrealistic to assume they will significantly support a bargaining representative which they oppose. The makeup of the legal structure for collective bargaining should have little impact on an individual's decision to withhold his or her services, unless there is a misapprehension of the law. Employees go on strike because they approve of the union or its objectives, or because they are afraid not to do so. While the law cannot and should

not interfere too much with private sanctions such as social ostracism, it is clear that the law already forbids certain forms of coercion of employees by unions; that should not be changed. To the extent that my proposal would reduce the need or desire of unions to coerce employees to refuse to cross picket lines—as I think would be the case because there would be less institutional pressures for the union and nonmember employees to reach a mutual understanding on the matter—I think it would be a good development. Insofar as employees currently support only unions of their own choice or disputes of their own approval, I think my proposal involves no loss in economic power. That is, some employees currently do not support their majority representative when they do not want to.

However, it may be said also that an employer today may not get his employees back to work by making an offer that is acceptable to only some of the employees rather than to the union.⁵⁸ My proposal makes it possible for the employer to bid, in a formal way, for those employees who will sell their services most cheaply. Once those employees have agreed to terms, there will be more pressure for the other employees to capitulate, with the end result being that employees will receive considerably less than they do under today's collective system. The premise of this objection is that, under the current law and practice, such an offer does not weaken the union. But, of course, an offer (made to the union) which is acceptable to some of the employees does weaken the union's determination to reject it, because to the extent the offer brings back some strikers, persuades employees not to strike, or puts pressure (through employees) on the union to settle, the employer is able to undermine employee solidarity.

This argument, then, is a variant of the myth of employee solidarity. But it does raise a new consideration. Pursuant to current collective bargaining, it is conceivable that there are some employees who support their union because its position is close enough to those employees' own preferred views, and given the many other employees who support the union, these uncertain employees support it too. Under my proposal, they will not have to—they may have their own representative which will more closely fit its demands to their needs. If my proposal

⁵⁸ See *NLRB v. Crompton-Highland Mills, Inc.*, 337 U.S. 217 (1949).

were in effect, it is possible that more employees will be bought off, legitimately, by the employer's bidding technique.

There are some competing considerations, however. First, it is just as conceivable that unions sometimes will compete with each other to get the highest wage—or best benefits—possible. The competition for employees' allegiances may produce exactly the opposite result from the one raised by the objection under consideration—the unions will act more competitively with employers than they do under the present law and will force employers to make greater concessions than are presently sought or achieved. To the extent that is true, the employees are the beneficiaries of more effective representation. Probably, both of these phenomena would occur, resulting in greater benefits for some employees, less for others. *In toto*, I am at a loss to know which will outweigh the other.

Even if it were indisputably true that unions were more effective in obtaining financial gain for their "wards" with the doctrine of exclusivity than they would be without it, it is not clear that the costs to society would be so impressive if the doctrine were abrogated. Several possible alternative consequences might follow its abandonment. First, there might be no noticeable or significant redistribution of wealth and comfort in our society. A second possibility is that while there would be no redistribution as between organized workers and the rest of society, there might be some among the organized workers themselves. A third speculation is that there would be a redistribution between organized and unorganized workers. Fourth, there is the possibility that capital would be the victim of the abolition of exclusivity. And finally, of course, there is the chance that capital would be the beneficiary.

While one cannot be very sure about these things, there is some evidence which suggests that capital would not be significantly affected by a change along the lines I suggest. It appears that improvement in real wages in our society as well as the industrial nations of western Europe is closely tied to the growth in a country's gross national product and very little related to the size and growth of the labor movement.⁵⁹ If this is true, a change in the way the labor movement operates may

⁵⁹ E. BROWN & M. BROWNE, *A CENTURY OF PAY: THE COURSE OF PAY AND PRODUCTION IN FRANCE, GERMANY, SWEDEN, THE UNITED KINGDOM, AND THE UNITED STATES OF AMERICA, 1860-1960*, at 95-104, 291-316, 317-22 (1968); A. CARTTER & F. MARSHALL, *LABOR ECONOMICS: WAGES, EMPLOYMENT, AND TRADE UNIONISM* 361-68

not have much effect on how much workers take home. While evidence supports this conclusion, it must be pointed out that the nature of our society has changed considerably in the last one hundred years, the period in which these studies have been made; it is conceivable that workers in both the United States and Europe would have been worse off without a labor movement, because the "natural conditions" for protecting workers have become worse during this period of time. I have in mind, in particular, the fact that more and more blue collar jobs require less and less skill. This means more persons can compete for the jobs which become available, and that the cost of their labors would be lower, but for the labor organizations. While I do not have the capacity to assess the relative strength of this factor which might have decreased real wages even in the face of growing gross national products, it is still quite possible that all workers as a class would be no worse off economically without unions.

While the above data suggest that we should at least have some doubts whether labor unions succeed in cutting into the capital of management, it seems beyond dispute that unions do effect a change, sometimes radical in nature, in the distribution of wealth between the organized and the unorganized workers in society. While capital and labor, as separate classes, have maintained a relatively stable proportionate share of the gross national product, one cannot gainsay that carpenters, for example, have done much better through most of this century than groups such as teachers, who were not significantly organized until recently. I mean to make no case for or against either of these jobs. Each has its important place. But it is hard to justify why the carpenters' rewards have been so much more impressively increased during this century than those of the teachers. I think no one would doubt that a, if not the, major explanation of this disparate development is the role of organized labor. The disparity has nothing to do with the inherent worth of the contribution of each type of work; nor does it reflect the number of years of preparation needed for the job. It reflects only the concept of the market, with carpenters being harder to employ at cheap prices because they refuse to compete with one another.

(1967); L. REYNOLDS, *LABOR ECONOMICS AND LABOR RELATIONS* 201-19, 657-61 (5th ed. 1970). *But see* G. BLOOM & H. NORTHRUP, *THE ECONOMICS OF LABOR RELATIONS* 392-95 (7th ed. 1973).

Thus, the labor movement's impact has been to pay organized labor more. Did this mean that employers made less? Not at all. What it meant was that carpenters' products cost more, and school teachers, who did not get the raise of the organized workers, paid the increased cost of the goods. In the end, the employer was protected, as was the carpenter; but the teachers realized less real income. It is my judgment that the most certain impact unions have had in our society's distribution of wealth has been to give to the organized worker and to take away from the unorganized.

If this is an accurate assessment of the impact of the labor movement, I am not deeply troubled by an alleged loss of economic power which might result from the loss of exclusivity. While I recognize the legitimate interests of organized workers in looking after their own welfare, even at the expense of their unorganized brothers and sisters, I do not think society has to weigh organized labor's interests more heavily than the interests of the unorganized workers. Indeed, many unorganized workers have remained in that state for reasons which reflect some sense of societal obligation not to organize, or at least not to use economic weaponry. Should employees who are of that view, or who are under a legal disability which imposes such a view, be put at an economic disadvantage vis-à-vis the rest of their society?

Therefore, while I am not persuaded that my proposal would weaken the overall power of the labor movement,⁶⁰ it is not altogether clear that the weakening of unions would be a bad societal development, insofar as they merely pass additional costs on to unorganized workers.

Another claim for unions is that they have brought some sense of democracy and fair play to the workshop. To the extent that the justification for labor's strength has been its bringing to the individual a sense of participation in his work environment and a sense of being treated fairly, there is at least some inconsistency in an attempt to justify the retention of exclusivity. First, exclusive representation deprives many individuals of the representative they want, certainly an antidemocratic notion when applied to individual grievances. Second, the concepts of fair play and of protecting individual interests may

⁶⁰ If exclusivity were abandoned, there might be a realignment of the employees' allegiances to various unions, but I am not clear that the overall strength of the labor movement would be less.

be better served by doing away with exclusivity and giving every employee the right to select his or her own representative with whom the employer would be required to bargain.

2. "Undesirably" Homogeneous Groupings

To this point, I have addressed what is the most common argument to support the idea of exclusivity. In my judgment, other arguments raise problems at least as serious. Perhaps the most complex is the problem raised by the nature of the alliances which groups of employees will make. For example, the skilled workers can be expected to join their own unions, just as we expect them to do today in most *Globe* elections.⁶¹ Initially, one might be of the view that this is not necessarily all bad. Indeed, to quite an extent, my proposal would do nothing more than give unskilled employees a choice similar to the one already given skilled workers under the present state of the law, a choice that comes closer to real freedom of choice and representation. However, there is a cost to the unskilled workers if the skilled workers separate from them to a greater extent than they are permitted today. Presumably, skilled workers are prepared to work for their employer only if certain conditions are met. However, their hopes or desires may be greater than what they realize today when an industrial union represents them, and these hopes and desires may be realizable under circumstances different from those existing today. For example, skilled workers may be prepared to work for no less than, say, eight dollars an hour. But they may hope for nine dollars, and might be able to realize that greater salary if they are able to negotiate on their own; the employer could then compensate by offering less to the unskilled workers, who are more easily replaced if they are not satisfied with the employer's pay scale. Under the present state of affairs, with skilled employees merged in collective bargaining units with less skilled or more easily replaced employees, the union may aim only for the eight dollar figure, on the thesis that the skilled employees will be minimally satisfied and more will be left over for the unskilled workers. If one has some concern for the status and rewards of the less able, skilled, or fortunate workers, the consequence I describe should be unsettling.

Candidly, I have no idea to what extent my proposal would result in this kind of pattern. Nor am I sure to what extent the

⁶¹ *Globe Machinery & Stamping Co.*, 3 N.L.R.B. 294 (1937).

present status of industrial collective bargaining has already capitulated to the apparently increasing insistence of skilled workers to be more adequately represented by industrial unions, although this capitulation by the unions must result, to some extent, in a reduced effectiveness of the representation given the less skilled employees.⁶² It may be that some skilled workers have already exacted from the industrial unions a price close to what would occur under the nonexclusivity proposal.

Moreover, it is not clear that all skilled workers would stick together. While it appears to be true that skilled workers usually opt for separate representation when they are given the chance under present law, the choices these employees currently have are very limited: the industrial union or the craft union, either of which will have to represent a unit. Given a broader choice of alternatives, skilled employees might well split their allegiances in more diverse ways. Indeed, depending on the factors involved in making an individual choice of representative, it is entirely conceivable that there would be situations in which skilled and unskilled workers would continue to find themselves represented by the same union. This is especially true under my proposal, since the less skilled workers are free to select the union which traditionally has represented skilled workers only.

Another type of split among the employees that might be encouraged by my proposal is one along racial lines. Having always subscribed to the ethic that racial separation is not a good thing, I am unsettled about extending the practice of segregation in our society. On the other hand, the competing value of relatively more freedom of choice, especially if it is somewhat informed, cannot be ignored. The fact that unions deal with job opportunities and economic success, facets of life which probably generate unique intensity of feeling, supports the idea of freedom to select one's own union, even if racial considerations, rightly or wrongly, are predominant. One should not be deceived into thinking that employees generally understand or even know about all the factors that we (the "rational" people) would take into account before deciding whether or not to join a union.

⁶² See note 49 *supra*. While the interpretation given article 19, § 3, of the UAW constitution emphasized the interests of the overall unit, there can be little question that the authorization of a separate vote for skilled employees highlights their interests. In the long run, such treatment can only come at the expense, to some extent, of the production (nonskilled) workers.

But they do know something. And they have their biases and prejudices which they should be able to indulge just like the rest of us. Nor can one ignore the fact that the biases may be accurate. The black employees' views that they are being discriminated against may be valid, although unprovable. Moreover, the presence of several unions should provide employees more information about their choices for representation than they receive under the present system. To that extent, a choice based on racial considerations becomes more rational (in the two senses, at least, of informed choice and of eradicating perceived racial discrimination). It would be my hope that, as the competing unions perform, employees would grow away from such racial choices, as other factors take on more importance to the employees and the racial factor less.⁶³

3. Seniority

It is generally agreed that one of the most important contributions made by the labor movement and collective bargaining to the welfare of employees is the seniority system, which gives employees job security free of arbitrary employer whim or bias. As long as a union represents all of the employees who compete for like or similar jobs, it is an easy task to create a consistent seniority system which works well for all concerned. While the basis for seniority (plantwide versus department versus particular job) and the application of seniority (layoffs, recalls, transfers, promotions) may vary, the fact that the union today usually represents all of the employees in the relevant competing pool makes it possible to reach a single seniority ladder which applies to those employees. Would it be possible to retain such a seniority ladder under my proposal?

If the proposal were adopted, there would almost certainly be changes in the ways seniority ladders were created. One possibility would be to allow each union the opportunity to negotiate its own seniority ladder. The problem with such a solution, of course, is that at first blush there would be no basis for deciding which ladder was the relevant one for making the next

⁶³ Parenthetically, perhaps, nothing in the proposal should be read to suggest a change in the requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to e-15 (1970), *as amended*, 42 U.S.C. §§ 2000e to e-17 (Supp. II, 1972), which would preclude employers from discriminating on the basis of race in their dealings with employees, and would similarly preclude unions from discriminating with regard to membership.

layoff, recall, promotion, or transfer. Since that would be a very difficult situation, one hazards the guess that, somehow, the various seniority ladders would have to be reconciled. One possible method to deal with the problem would be to have the first-in-time contract with one union set the pattern for all relevant seniority ladders contained in later contracts with other unions. That first contract would tie the employer to a certain type of seniority scheme which he would not be free to abandon without the first union's consent. The problem with this solution, of course, is that the first union would, in effect, be negotiating a contract for all the employees, not just those it represented. This would constitute a throwback to exclusivity, but it would be less appropriate than the present system because that union might not represent a majority, or even a plurality, of the affected employees. Moreover, such a scheme would encourage employers to attempt to buy off an otherwise weak union with the promise that it would be setting the seniority for all the employees, and thereby be protecting its own at the expense of other employees, who belong to stronger unions.

Another possible response to the dilemma caused by the needs for seniority would be some sort of coalition bargaining. The nature of the marketplace, one can speculate, would push together the unions to negotiate seniority when there was no rational distinction between the work performed by members of each union. To the extent the unions did not voluntarily cooperate with each other, a problem of the sort mentioned in the last paragraph might occur at first: The employer could appeal to unions (or unrepresented individuals) with the claim that the seniority issue offered a chance for gain over rivals. It is not clear that such a consequence would be final, because the employer might well be placing itself in an impossible bind if it attempted to woo unions on the basis of a favorable seniority scheme; it might subsequently find itself faced with a stronger union demanding a different ladder. The employer would be left with the undesirable choice of either breaking the first contract and paying the consequences, or defying the strong union and paying the cost of economic coercion. Faced with such a potential dilemma, the employer might well desire some sort of coalition bargaining, or at least peace with the stronger unions, which would then be making the decision, as a practical matter, on the issue of seniority. (This result is not unlike what is done

today; the stronger elements within an exclusive representative presumably have the biggest voice on this issue).

While I am speculating again, it seems that both the employer and the unions would desire some sort of uniformity (much akin to today's seniority ladders) and that their mutual desires would most likely produce such a result through some sort of coalition bargaining.⁶⁴

4. Multiplicity in Negotiations

Finally, there is considerable concern expressed for the plight of the employer who will be faced with the ordeal of dealing with a number of unions and all that entails: more negotiating sessions, more grievance proceedings, more strikes or threats of strikes, and more competition among the several unions. This concern may not be universal, because there seem to be a number of employers today who desire to deal with as many unions as possible. I am unaware of any evidence that such employers are unduly burdened by the presence of several craft unions, rather than one industrial union.⁶⁵ Moreover, there is no significant evidence that these employers suffer more inefficiency due to strikes. Finally, if it is correct that employee dissatisfaction with the collective bargaining agent is often the cause of wildcatting and other conscious and unconscious concerted acts which result in lower efficiency, there would be considerably less of that sort of "bad" behavior under the proposed system. In terms of efficiency, the result might be a net gain.

Nevertheless, it is not implausible to believe that the proposal might result in less efficiency for some employers and their

⁶⁴ While the seniority problem is highlighted in the text because it seems most important, it is really a symptom of a more broadly stated objection to the proposal: uniformity and coordination are needed for some aspects of working conditions. For example, it would be unthinkable in some circumstances for an employer to be forced to grant a series of coffee breaks to different employees at different times. Under the proposal, the solution to this problem and others like it would have to be reached in much the same manner suggested in the text.

⁶⁵ It is true, however, that the proposal might complicate matters even for large employers currently dealing with several unions. Today, such an employer deals with a discrete number of unions for a like number of units. Under the proposal, the employer would have to deal with each of a number of unions (possibly more) over the several different types of jobs and employees in the plant. To that extent, multiplicity would be a problem even for employers already dealing with several unions. Whether it would involve more negotiations for such employers, however, is problematic.

businesses, while not having such an impact on others. While it is speculation, small employers will probably be more likely to find the multiple negotiations a serious burden. Insofar as these employers compete only among themselves, the impact may not be great. If they compete with significantly larger employers, it is conceivable that negotiating with several unions may have a serious impact on them.

In some ironic way, this objection is the reverse of the "solidarity forever" concern. Unions can be expected to object to the proposal because the loss of claimed unity will hurt vis-à-vis the employer. Some employers may object because the inefficiency of several negotiations will result in greater concessions to reduce the time committed to negotiations, thereby strengthening unions vis-à-vis employers. Can it be both ways?

The answer is probably yes, but only in overall terms. That is, some employers may gain by the apparent loss of employee unity, while other employers may lose because of the multiplicity of unions, negotiations, and grievances. Whether the present apportionment produced by exclusivity is better than the distribution that would result from nonexclusivity is something I find incalculable.

III. CONCLUSION

On balance, it is not clear to me that the possible drawbacks of abandoning the exclusive representation model for collective bargaining in our country would outweigh the benefits which would result. The proposal would give individual workers considerably more protection to vindicate their own individual interests. In the process, it is possible—perhaps likely—that unions would be more democratic, collective bargaining would at least deal with more of the employees' problems and desires, unions would be more responsive to individuals' grievances, and, incidentally, the National Labor Relations Board would be relieved of its election responsibilities. While there appear to be many possible drawbacks to the proposal, one can be sure neither of their likelihood nor of the extent of their impact upon legitimate interests affected by the labor laws. Hopefully, this Article has at least made the idea of nonexclusive collective bargaining something reasonable and worthy of further exploration.

Mr. WILSON. We have Mr. David Denholm of the Public Service Research Council who asked to be included. We have sufficient time, Mr. Denholm, for you to make your presentation.

**STATEMENT OF DAVID Y. DENHOLM, EXECUTIVE VICE PRESIDENT,
PUBLIC SERVICE RESEARCH COUNCIL**

Mr. DENHOLM. Thank you, Mr. Chairman and members of the subcommittee, it is indeed a pleasure to be here today.

In the 2 years of existence of Public Service Research Council, we've attempted to testify on several pieces of legislation; that is the first time we've actually had an opportunity to present testimony other than having it inserted in the record.

I am the executive vice president of the Public Service Research Council; it's a national citizens' organization. Our sole concern is employer-employee relations in the public sector.

I have come today only to support H.R. 5023, not so much from the point of view of the individual involved, but the public policy involved in the implications of that public policy. I have a written statement, which is yours for the record. I will try not to read it in total.

One of the concerns that we have with H.R. 5023 is that it will invade the principle of exclusive representation; it's through this exclusive representation principle in fact that unions become what many scholars in the field of labor relations have described as the employee's or worker's economic government. They become the economic government because so much power is available to the union in its relationship with the employees, because it's in the area of grievances that the maximum latitude is available, and because often the interests of an employee are not necessarily, in a grievance, the interests of employee against management, but the interests of one employee against another employee.

For a union then to have the exclusive right to represent an employee in that regard means that union has to make a choice between the interests of one employee and the interests of another employee, which may be true in the case of promotions or some other form of subtle discrimination.

The National Right to Work Committee referenced Mr. Schatzki's law review article, so I'll abstain from that. We did send a copy of the entire article to each member of the committee for your reference with one particular paragraph highlighted.

Further, one of the works that we've been distributing ever since we got started is an article entitled: "Sovereignty and Compulsory Public Sector Bargaining." In this article Sylvester Petro of Wake Forest University makes a very salient point on this aspect of government. I'd like to quote that.

As the exclusive bargaining agent, the majority union plays a large, if not dominant, role in the control of the employment destinies of all the employees in the unit, both as regards determination of the terms and conditions of their employment and as regards the prosecution, or nonprosecution, of their employment grievances. So great, indeed, is the power over employees granted by contemporary labor relations statutes to majority unions that they have frequently been called governments.

We won't attempt to enumerate the injustices that occur because of the exclusive representation principle in the public sector. I would like

to go to one point that Congressman Clay raised and that is of sovereignty and majority rule.

In using majority rule to determine the exclusive representation, you in fact create what is a dual sovereignty. Sovereignty by its nature, whether you think it's constitutional or whatever, is singular. A dual sovereignty creates disorder and disharmony, and anything you can do to invade this principle of exclusive representation to weaken the idea of dual sovereignty will in fact provide for a more harmonious, more stable, relationship in the Postal Service. On that basis, we support H.R. 5023.

Congressman, Roger Zion, our representative on Capitol Hill, or our staff is available for further questions.

Mr. WILSON. Mr. Denholm, you mentioned that the council is a little more than 2 years old and has attracted the working support of more than 500,000 people from all walks of life; how many of these people are public employees?

Mr. DENHOLM. I have no means of determining that.

Mr. WILSON. You have no way of knowing?

Mr. DENHOLM. No.

Mr. WILSON. Is there a dual membership between your organization and the Right to Work Committee?

Mr. DENHOLM. No, there is not.

Mr. WILSON. You don't have the same end?

Mr. DENHOLM. No, we don't. In fact, as you can appreciate, in some instances there is an alliance of convenience between our two groups.

One thing that has been a little difficult to point out to the people is where the difference exists and why it exists. The Right to Work Committee is concerned only with compulsory unionism from every walk of employment, from the farm workers, to construction workers, public employees, every type of employment with compulsory unionism.

We're only concerned with public sector labor relations, but we're concerned in every respect, including such things as arbitration, exclusivity, collective bargaining, strikes, and also compulsory unionism. To the degree that a public sector labor relations bill includes a compulsory unionism provision, we would both be in opposition to the bill.

In several instances in State activities throughout the year, most recently in Alabama where they have a right to work State, where the bill did not provide for a compulsory union shop, it did set up a system of collective bargaining, we opposed the bill and they didn't.

Two years ago in Florida there was a right to work bill in the legislature; it was amended into a public sector collective bargaining bill; we opposed the bill and they supported it.

So that's the distinction. Insofar as the members being different, I think that demonstrably—I would not want to speak for them—we have discovered that most of our members are individuals. The breadth of the support has been striking to us.

Mr. WILSON. Is your concern with H.R. 5023 based upon the bill itself or because of the compassion you have for the Alliance?

Mr. DENHOLM. No, sir, not at all. Our concern is with the public policy involved. We believe that exclusivity creates dual sovereignty, that this is unsound public policy because it leads to disorder. Whether there would be any interest on the part of the National Alliance or any-

one else, we would support the bill because of the public policy question.

Mr. WILSON. Were you here at the previous hearing?

Mr. DENHOLM. I'm sorry, I was not.

Mr. WILSON. On February 11, I asked each of the unions who were opposing H.R. 5023 whether they would agree to some compromise that would give the Alliance exclusivity, and no other minority group or religious organization, the right to represent their own membership on grievance matters. As far as your organization is concerned, you're not concerned with such an agreement; you just support the bill itself.

Mr. DENHOLM. Exactly, and as I mentioned in the testimony, we believe that this is not a complete solution.

You will find that Professor Schatzki's Law Review article is dealing primarily with the private sector, but he reaches some rather profound conclusions on the entire nature of exclusivity and majority rule.

Our concern would be just with the public sector. We don't endorse all of his conclusions.

The principle of exclusivity developed in our national labor policy back in the first National Labor Relations Act in 1935; a lot has happened since then. I think there is a fresh wind in this whole area in terms of policy, the policy of government vis-a-vis unions, vis-a-vis employers, and that exclusivity is one of those things which will come under increasing attack because it has some inherent things in it; it could be resolved by a different approach.

Mr. WILSON. Mr. Simon, do you have any questions?

Mr. SIMON. I do not.

Mr. WILSON. Do you have any questions of the other witnesses?

Mr. SIMON. I was just reading the statement of Mr. Adams; I don't know if he is still here.

Mr. WILSON. Mr. Engen represented Mr. Adams, if you would care to ask him.

Thank you, Mr. Denholm.

Mr. SIMON. I was opposed to some of the Sunday closing laws in the State of Illinois.

Mr. ENGEN. I was aware of that.

Mr. SIMON. I was not aware of your objection, the objection of the Seventh-day Adventists, to union affiliation. I was just curious, so that I understand your position, what that objection is.

Mr. ENGEN. It's a rather involved thing, but I will try to just make a brief statement. I don't think it will answer all of your questions.

Basically, we feel—and many of the members feel this way—that to be involved to the extent that is necessary in not only membership but financial support of an organization that has principles or policies that go counter to religious convictions would not be appropriate.

Mr. SIMON. I guess my question is how that goes counter to religious convictions.

Mr. ENGEN. In other words, what are the things that it goes contrary to; is that your question?

Mr. SIMON. Yes.

Mr. ENGEN. In the first place, there are certain admonitions in scripture that we refer to: "Love thy neighbor as thyself." Christ divided the decalogue into two parts. "Love thy neighbor as thyself" is one

portion. "Love the Lord thy God with all thy heart" embodies the other portion.

In doing so we consider every individual as a neighbor. Financial support to an organization that could cause injury, or cause contention, or use force, or coercion, either subtle or overt, we don't believe to be in harmony with that principle. Basically, activities surrounding the strikes, we don't believe to be in harmony with that.

Activities that would through the mere weight of coercive force, collective force shall we say, achieve or arrive at the goals, we don't believe that we can have part in that type of activity.

That, on the surface, is one of the explanations I can give you.

Mr. SIMON. That's part of the dogma.

Mr. ENGEN. That's part of the teaching of the church. Maybe Mr. Nixon would have another comment.

Mr. NIXON. We often are in the halls of Congress talking to the Congressmen about labor organizations. I just want to point out that the church teaches the same thing about employers. An employer who is oppressive, we would recommend to our members that they find someplace else to work, or something like that. We have the same attitude toward both sides.

In the fifth chapter of the Book of James, it talks about the oppression of the workers. This is not just an antilabor union position, but it's the kind of a philosophy that we apply across the spectrum of employment.

Mr. SIMON. So then a member of your denomination could not belong to the chamber of commerce or the National Association of Manufacturers, et cetera.

Mr. NIXON. If he felt that this organization was leading to the oppression of the workers, we would recommend that he not, yes.

Mr. ENGEN. There are other types of organizations that the church strongly recommends members not to be affiliated with such as secret societies or other types of organizations that might go contrary to or put him in alliance with those who would be going contrary to his relationship with Christ.

Mr. SIMON. I was just not aware of that; I appreciate your willingness to clarify that.

Mr. WILSON. You sure put the Congress in a bad spot. For example, the Catholic Church very strongly supports organized labor. They are very active in the union activities. I don't think they find the same things in the Bible as your church does.

The Catholics roam the halls and tell us, "We disagree with the Seventh-day Adventists; we would like you to support our position."

Mr. ENGEN. That's very true. We found this same situation in Wisconsin when we were faced with a similar bill up there relative to public employees.

We had talked with a number of legislators, as well as with other organizations in the State. We found an interesting situation there relative to the Catholics. There was a matter of conscience that was in the legislature at that time which would have coerced or forced a physician, a member of the Catholic faith who had religious convictions, personal convictions, against performing abortions to lose his license if he did not perform such an abortion on demand.

We said that is going too far in the invasion of the individuals conscientious convictions. We told them that we would support an individual's conviction.

We are not talking about the abortion issue as such; we're talking about that physician's conviction in the matter.

Interesting enough, in our testimony for the right of conscientious convictions in the public employment collective bargaining process, the secretary of the Catholic—I forget the name of the organization—appeared representing the Council of Bishops of the State of Wisconsin saying:

We don't necessarily believe the same as the Seventh-day Adventists do in this regard, but we certainly support their right to be able to hold these convictions without being discriminated against. Therefore, we support their right to have this kind of protection.

That was an interesting response that they made at that time.

MR. WILSON. Again, thank you very much, Mr. Engen; we appreciate your being here.

This will conclude the hearings for this session of Congress on these two pieces of legislation.

Thank you very much.

[Whereupon, at 10:50 a.m., the hearing was adjourned.]

[The statement which follows was received for inclusion in the record:]

STATEMENT OF THE PUBLIC EMPLOYEE DEPARTMENT, AFL-CIO

The Public Employee Department, AFL-CIO, composed of twenty nine national unions representing some two million federal, Postal Service, state and local government employees, appreciate the opportunity to submit this statement for consideration of your Subcommittee.

The Postal Reorganization Act, as it addressed labor-management relations applying the National Labor Relations Act, was never complete. This is because of its denial to public workers of the right to strike and the right to negotiate union security as a provision of the collective bargaining agreement. H.R. 56 would remedy these basic omissions.

The Convention of the Public Employee Department of the AFL-CIO, last September here in Washington, adopted a Resolution calling upon the Congress to pass legislation to give all public employees the right to strike. Experience in both the private sector and the public sector particularly since the National Labor Relations Act of 1935, has been that the strike is qualitatively of central importance. The right of individuals acting together to withhold their labor when wages or working conditions are intolerable is necessary both to liberty of the employees as Americans and to the collective bargaining process. The experience, at the same time, has shown that the strike is not a central measure quantitatively (that is there are relatively few strikes even in the private sector); thus the existence of the right obviates, in the overwhelming number of instances, the necessity to exercise it.

At the same Convention the Public Department called for repeal by Congress of Section 14(b) of the Taft-Hartley Act, National Labor Relations Act as amended, asking the Congress "... to recognize the responsibility of insuring complete collective bargaining freedom for all public employees ...". In a separate Resolution the Department Convention asserted that "freedom to contract" should be a basic right of any employee public or private. "... and therefore it urged the Congress to protect the right of public employees for the "freedom to contract" a union security agreement.

The relationship of this point to other legislation before your Subcommittee—H.R. 5023—is clear. In our view the exclusive representative of public employees including Postal Service employees, should continue to have the responsibility to

process all grievances—given the present provision that any individual employee may at any time raise any question with the employer agency—and therefore he or she should become a member of, and take part in the programs of, the exclusive representative union. As a minimum, the employee should pay the dues which permit unions representing her or him to perform its function.

It would be highly counter-productive and disruptive of sound labor-management relations, in the public service or elsewhere, to permit splintering or a divisive competition in which two, three, four or more employee organizations would be introduced into the grievance settlement process. While neither collective bargaining itself nor the grievance procedure aspect of it work perfectly, experience shows that it is by far the best method yet devised to accomplish just and stable labor-management relations.

In sum, we urgently request your approval and the Congressional enactment of H.R. 56. At the same time we ask your disapproval of the potentially destructive H.R. 5023.

