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EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS, 1975



HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

OR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 1479

TO PROTECT THE ECONOMIC RIGHTS OF LABOR IN THE BUILDING AND CONSTRUCTION INDUSTRY BY PROVIDING FOR EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

JULY 10, 11, AND 15, 1975



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

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EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS, 1975

THURSDAY, JULY 10, 1975

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

The subcommittee convened, pursuant to call, at 10:07 a.m., Senator Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Hathaway, Javits, Taft, and Stafford.

Staff present: Donald Elisburg, counsel; Don Zimmerman, minority counsel; Howard Moore, professional staff member; David Dunn, minority professional staff member.

The CHAIRMAN. We will come to order with our hearings on S. 1479. This is the Subcommittee on Labor. And, to say at the outset, on April 18, along with Senator Javits and Senator Cranston, I introduced this bill, S. 1479, a bill which would essentially equalize regulation of the picketing activities of the construction unions with those of manufacturing unions.

Since that time we have been joined by Senators Ribicoff, Kennedy, Schweiker, Tunney, Hartke, McGovern, and Bayh.

In the other body, the House Education and Labor Committee recently completed hearings on a companion bill.

Since the enactment of the Taft-Hartley Act in 1947, the courts and the NLRB have developed a separate set of rules to govern picketing at construction sites. These construction industry rules are far more restrictive than those applied to industrial and manufacturing sites.

This separate treatment of the construction industry is not supported by the language of the Taft-Hartley Act or its legislative history. It is built upon the fiction that a general contractor and the subcontractors which he engages are somehow separate legal entities for the purposes of the prohibition against secondary boycotts.

This proposition ignores the economic realities of the construction industry.

The facts are that contractors and subcontractors form a single coordinated and commonly controlled enterprise on the jobsite. If a nonunion subcontractor is on a jobsite, the general contractor cannot be viewed as neutral to the labor dispute when the dispute relates to the very presence of the subcontractor and the fact that lower-than-union-scale wages are being paid.

We must view the nature of construction projects and the interrelationships of the various subcontractors and contractors in terms of economic reality. Subcontractors are performing work which is directly

related to and in support of the normal work operations of the other subcontractors. The electrical contractor can't perform his work unless the studs have been put up by the carpentry contractor, who in turn can't put up the studs until the concrete forms have been laid.

All of the contractors are engaged in a joint venture with a common objective.

This interrelationship is exemplified by the fact that the general contractor closely supervises, completely in control of the progress of all subcontractors' work. The work of the carpenters is as related to and as supportive of the everyday operations of the electrical contractor as the delivery men's work is related to and supportive of the everyday operations at a manufacturing plant. While the deliveryman's entrance to the plant site can be picketed by the production employees, a separate gate for carpenters at the construction site cannot be picketed by the electricians.

The construction project site must also be recognized as the primary site of the dispute. For many subcontractors, the construction site is the only place they operate in any meaningful way. If they have an office off the site at all, it is usually a small operation.

In most situations the project site is the only place the union can effectively carry on its dispute. To preclude the union from broadly picketing the site is to deprive it of the right to engage in legitimate primary activity, which Taft-Hartley in no way was tendered to restrict.

Continuous efforts have been made through the years, since 1949, to eliminate this inequitable treatment. All Presidents since 1949, either on their own or through statements by their Secretaries of Labor, have spoken in favor of such efforts.

Most recently, Secretary of Labor Dunlop testified in favor of the proposal, suggesting, as he did, some modifications.

This bill, S. 1479, is intended only to remove from the law an anomalous, unintended treatment of labor relations in the construction industry. It does not alter the policy against secondary boycott activity. It is intended to fit the law governing labor relations in the construction industry to the realities of this vital industry.

[The text of S. 1479 follows:]

94TH CONGRESS
1ST SESSION

S. 1479

IN THE SENATE OF THE UNITED STATES

APRIL 18, 1975

Mr. WILLIAMS (for himself, Mr. CRANSTON, and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8(b)(4) of the National Labor Relations Act, as amended, is amended by inserting before the semicolon at the end thereof ": *Provided further,* That nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of

the construction, alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry: *Provided further,* That nothing in the above proviso shall be construed to prohibit any act which was not an unfair labor practice under the provisions of this subsection existing prior to the enactment of such proviso: *Provided further,* That nothing in the above proviso shall be construed to authorize picketing, threatening to picket, or causing to be picketed, any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of race, creed, color, or national origin: *Provided further,* That in the case of any such site which is located at any military facility or installation of the Army, Navy, or Air Force, or which is located at a facility or installation of any other department

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

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

The CHAIRMAN. Senator Taft, before we turn to our first witness and our good friend, the distinguished Secretary of Labor Dunlop, do you have a statement?

Senator TAFT. Thank you, Mr. Chairman. I have no formal statement this morning. I do welcome having the Secretary here and I welcome the fact that the committee is having these hearings on this very important subject. I think in these economic times, the situation in the building industry is one of great national concern and one to which we are very properly turning our attention.

I note the long history of discussions with regard to this particular proposed change in the law. I am happy to see the Secretary's testimony, which I have had a chance to review, and also the testimony he gave on the House side, which I have also had a chance to review.

The recognition of the fact that we have to look at some very general propositions and questions in framing such legislation is important. It is not a simple matter. I particularly note the quote the Secretary has made from former Secretary of Labor George Schultz:

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

And I certainly feel that I can concur with that general approach. I think more and more as we become sophisticated in the area of labor relations in this country, we are going to find ourselves requiring and well-advised to try to adopt particular approaches towards particular problems, that aren't necessarily universal, insofar as all industries are concerned.

And I think taking a hard look at the construction area today and the impact of recession and inflation upon it, including unemployment which is at a very high level, is in my view, taking a sound and a progressive approach.

I welcome his testimony and look forward to hearing the Secretary.

The CHAIRMAN. Thank you, Senator Taft. I mentioned that we have a conflict of activity going on right now with a conference on energy—and I know many of our members have to be at that conference. Senator Eagleton particularly had hoped to be here, but he is deeply involved in the other subject, so he can't.

Senator TAFT. Mr. Chairman, also I might say that I have just come from the Subcommittee on Health, which is starting extremely important hearings, of course, with Senator Kennedy, into drug administration. I know several of the Members where there and they may come here.

The CHAIRMAN. I just wanted the Secretary to know that there was no boycott of his testimony at all intended, primary, or secondary. It is just an impossible conflict of activity.

We are greatly honored to begin these hearings with the statement of the Secretary of Labor.

STATEMENT OF HON. JOHN T. DUNLOP, SECRETARY OF LABOR, ACCOMPANIED BY WILLIAM KILBERG, SOLICITOR, DEPARTMENT OF LABOR

Secretary DUNLOP. Mr. Chairman, Senator Taft, I will not read the full text of the statement that has been previously distributed

to the subcommittee. I would, however, request, Mr. Chairman, that the statement in full be inserted into the record, if I may.

The CHAIRMAN. It will be inserted in the record at the conclusion of your testimony.

Secretary DUNLOP. I would like to summarize it, but, in doing so, concentrate on certain points rather than simply trying literally to pay equal attention to all the points made in it.

And I will read certain initial portions of it and, as I say, summarize it as rapidly as I can, as follows:

I appear before you today to discuss S. 1479, a bill designed to remove certain restrictions upon peaceful labor picketing at construction and building sites. Accompanying me today is Mr. William Kilberg, sitting on my right, the Solicitor of the Department of Labor.

I would like to start by outlining background concerning recent collective bargaining in the construction industry.

As many people know, the industrial relations climate in this very important industry under collective bargaining improved significantly in the period 1971 through the spring of 1974 following a period of very severe deterioration in those relationships from the middle 1960's onward.

I think only the very superficial observer would confine attention to the marked retardation in the rate of wage and benefit increases under the Construction Industry Stabilization Committee. You will recall that the first-year increases, in 1970, were of the order of 15 to 17 percent a year.

They were gradually brought down to 5.4 percent for wages and fringes in 1973. That is the superficial level.

But no less significant was the very marked retardation in this period in the rate of work stoppages over the terms of agreements; the widening of the geographical and craft structure of negotiations in many localities; the differentiation of wages and conditions in many areas among particular branches of the industry, such as housing and heavy and highway work; the rationalization of work rules and conditions of work in many areas; the greater cohesiveness and devotion of the national labor and contractor leaders to the problems of the industry; the greater understanding and organization of the owners in their concern with construction; and I would say a general improvement, markedly recognized all around, in the climate of discussion and constructive approaches to problems.

And I wish to pay my respect to the courage and responsibility exercised by the national union and national contractor officials and representatives in the public interest in that period.

Now, unfortunately, it was not possible to maintain this momentum in the industry with the disappearance of controls on May 1, 1974, despite my own repeated advance urgings that something constructive be done.

Some parts of the country have reverted to the former malaise of widespread stoppages, whipsawing negotiations, disregard for productivity, excessive increases, and to a decline in the respect for leadership from the national union and national contractor groups alike. The long-term state of the industry and national interests understandably attracts local people much less than it does the national leaders on both sides. The national leaders on both sides are largely without authority effectively to deal with the problems of

local bargaining, although a number are, even today, courageously seeking to use their influence constructively in a limited number of situations. And that has been going on this spring through the efforts on the part of a committee that President Ford established on April 11 under Executive Order 11849.

Now, it is against this background and into this somewhat volatile industrial relations situation, at the very height of the collective bargaining season, that the Congress enters another stage in the legislative debate over situs picketing after a lapse of 6 years. And I want to say publicly what I have been saying in recent weeks to all segments of the industry—I implore all interested parties to conduct the discussion and the resolution of these sensitive issues factually, dispassionately, realistically, and in tolerance and good humor.

Only reasoned discussion can encompass the complex conditions that characterize the industry. Moreover, I would hope that these discussions can be carried on in a way not to exacerbate industrial relations in the industry, but rather to contribute to greater understanding and with a resolve to get this and other basic problems behind us. The industry is far too important to the country. You know its size and central location in our economic scheme.

Now, Mr. Chairman, I think I need not read further. As you know I rely, as Senator Taft quite rightly said, on the previous testimony of George Shultz to the House committee on April 22, 1969, where he set forth certain principles that he felt should be given attention by the Congress at that time.

I deal with those suggestions and I then suggest that there was one of his principles that might be elaborated on, might be made more significant, and on which I personally placed, both individually and as the spokesman for the administration, a somewhat greater emphasis. And that principle was that I would like to see introduced into the legislation a proviso for general advance notice of any picketing and, further, that such picketing should take place only if authorized by the national unions with which the locals are affiliated.

You will recall from my House testimony perhaps that subsequently I also said that perhaps some consideration should be given to a tripartite review of that authorization. That testimony also discussed the notion, as this does, that once authorized, the picketing should be authorized to continue for a period up to 30 days.

Subsequently, Mr. Chairman, the House committee asked us to submit proposed language incorporating those suggestions, and I at that time, through our Solicitor, submitted to the House Committee language to incorporate those suggestions. And at that time, Mr. Chairman, we submitted to the staff of this committee that language keeping this committee fully informed of that draft language.

Now, the final range of comments that I would like to make appear, Mr. Chairman, at page 10 of the statement as distributed. And I would like to return to reading it—and with this I shall be through.

A more general comment, I say, may be appropriate. I have come to the conclusion over the past decade that the legal framework of collective bargaining in the construction industry is in need of serious review. On January 28 of this year, in a unanimous statement, the leaders of labor and management, operating under collective agreements in this industry, also expressed the view that—and I quote—

"it is timely for labor and management to explore * * * a more viable and practical legal framework for collective bargaining."

A vastly enhanced role for national unions and national contractor associations, working as a group, is essential in my view if the whipsawing and distortions of the past are to be avoided, and if the problems of collective bargaining structures, productivity and manpower development are to be constructively approached by the industry itself, and in cooperation with governmental agencies.

I should like to bring back to the committee before very long detailed suggestions and proposed legislation dealing generally with collective bargaining in the construction industry.

Finally, Mr. Chairman, I would state that this Department, as always, will be available to the committee to explore suggestions which I have made in this testimony on situs picketing and to work with the committee on the range of issues involved in S. 1479.

Thank you for hearing me.

The CHAIRMAN. Thank you very much, Secretary Dunlop. Of course, your full statement that we have will appear in the record following your summary.

First of all, as you have indicated, there have been efforts begun on many occasions to further define the meaning of section 8(b)(4) of Taft-Hartley—what it amounts to is amendments of the law, clarification. History suggests that the decisions that have come to us from the National Labor Relations Board on this question of common situs picketing were at variance with some of the earlier congressional anticipation, and therefore there have been efforts, by the introduction of legislation, to clarify it over the years.

I think the most advanced stage that legislation has ever reached was to be reported by the full Labor Committee in the House of Representatives. It never reached that point, as I recall it, here in the Senate.

Am I correct on that? We have never reported from this committee to the floor. That has been done in the House, but it has never been considered by either House of Congress.

Secretary DUNLOP. The suggestion has been made, Mr. Chairman, that the Senate Labor Committee in 1954 did so report. I was not here then and I cannot testify to that.

The CHAIRMAN. Well, that would suggest that this is complex and it is difficult to achieve what we are attempting with the legislation that is before us.

It would seem, where I sit, rather elementary that when you are building a building or indeed building a subway or constructing a highway, the construction project is the enterprise—that it is not divided into separate enterprises around any part of the construction work. And that is central to the question here of whether we have, under law, prohibited secondary boycotts or whether we have lawful picketing.

Now, what do you anticipate the opposition will be presented here to the principle that the bill advances? I wonder if you could state again the two principles involved here, Mr. Secretary—the separate enterprise and the common enterprise principles that are involved?

Secretary DUNLOP. Well, I think that you have well stated the conflict that exists. And I guess, given my background, Mr. Chairman,

as a mediator and arbitrator, there is something to be said for both of them. Let me try to state them.

One point of view is that a construction site is an entity to itself. Their operations are highly interdependent. What happens on one part of the site affects another. The view is that if you want good management on a site, it should have responsible management throughout. Many of the contractor associations over the years have argued for single responsibility in order to manage well, and that is diluted when that responsibility is divided.

There are matters of productivity, work relations, scheduling, and so forth that do create the element and desirability of a single entity.

The other side is that commercial relationships have been established by the subcontracting or separate prime contracts which divide that responsibility. And sometimes that is real, sometimes it is somewhat artificial, in terms of the management and labor relations of a project. And it is, I think, those conflicts between the realities of the interpendence of work operations on a site with the commercial divisions that arise from the subcontracting and prime contract principles that create the problem that we have.

And from my practical experience, Mr. Chairman, in this area—and I hope, Mr. Chairman, that you will permit to be introduced into the record at an appropriate point the brief statement that I provided you and members of the committee on my previous part-time assignments in the construction industry. My reason for that is primarily so that there is no implication that I have tried to conceal from the committee. My past association with the problems in this industry, always, you will not, as a neutral—most of the time in a government capacity, sometimes in a private neutral capacity.

Senator TAFT. Mr. Chairman, I would ask unanimous consent that the record be inserted prior to the testimony of the Secretary.

The CHAIRMAN. That will be done, Mr. Secretary.

Secretary DUNLOP. Thank you, Mr. Chairman, and thank you, Senator Taft.

But in a practical sense, as I tried to explain earlier, you have all kinds of special arrangements that create these subcontracting arrangements, which it is very hard to distinguish among. For example, I have used the illustration of a general contractor who desires to let his subcontracts essentially on a union basis, and he lets most of them. And he may find that in one of the areas there are not very many subcontractors available in a locality, given the nature of the locality and the state of business. And he may then wind up finding that the subcontract bids that are submitted to him are pretty excessive in their price. And he may then say, well, I am not about to subcontract that particular piece union. I will sub it nonunion, because the price is so high and unreasonable in terms of what anyone would reasonably expect.

Now, I know of cases like that. And I think Senator Taft was saying a while ago, the practical realities of that situation are very hard for judges and for NLRB to distinguish.

Now, on the other side you may have a number of subcontracts where there are plenty of subcontractors in an area, and in which the general decides that he can make a fair amount of money not by doing any work on the job, but by simply, as we say, bid shopping around and make more money before the project begins by a reduction in the

standards of work on the job, after he has the prime bid, by simply getting lower wages or lower conditions on that job.

Now, I cite these two cases, Mr. Chairman, because they may in both cases wind up with a less than fully organized job. On the other hand, the economic realities behind the two situations are very, very different. And it does seem to me that the central issue you have mentioned, that there is a reality to the unity of a project—I agree to—but I also recognize that there is reality to the vast system of subcontracting and separate primes that has developed in the construction industry.

The CHAIRMAN. I am not quite clear when you distinguish the subcontracting or the other system of separate primes. Now, where there are separate primes, is that the owner dealing not with a general contractor but directly with an electrical prime or a labor prime or whatever it is?

Secretary DUNLOP. I use those terms, Mr. Chairman, to take account of the fact that over the years there are a number of owners in particular circumstances who have chosen, if you like, to act to a degree as if they were their own general contractor, and let directly for part or all of the work the separate prime contracts.

And so you may have a multitude of contractors on a job who are not in a relation of subcontractors to a general contractor, but in the relationship of separate primes to the owner.

The CHAIRMAN. How does that affect the situation that we are dealing with in this legislation? It really addresses itself to the general-subcontractor situation rather than the owner-multiple prime situation.

What situations would develop under the separate primes that this legislation would deal with?

Secretary DUNLOP. I was only initially, Mr. Chairman, trying to indicate some of the complexities of it.

The CHAIRMAN. Well, you have.

Secretary DUNLOP. It also depends very much, I think, on the proximity of one of those prime contracts to another. I have always kind of treated those problems as if they were of the same basic sort.

Mr. KILBERG. Mr. Chairman, may I attempt perhaps to add a degree of clarity or perhaps an additional degree of confusion—one or the other?

The CHAIRMAN. By the way, I am not an authority on all of the cases that have come through on this, but I don't recall any case that I have seen that deals with this situation where there was an effort to picket when you have the multiple primes.

Mr. KILBERG. Well, that kind of situation certainly could arise. The language of the proposed amendment to 8(b)(4)(B) does talk about employers in the construction industry who either are engaged as joint venturers or who are in the relationship of contractors and subcontractors in construction.

And so it may very well be read to exclude a situation where the owner is dealing directly with a series of prime contractors, and there is not a subcontractor-contractor relationship.

I think the important point that the Secretary is making is that both statutory and judicial law in this area seem to be ill equipped to deal with the very complex and unique aspects of labor-management relations in the construction industry. And, therefore, we would agree

as a general proposition that provisions which would specifically allow common situs picketing in certain circumstances are entirely appropriate and called for, at the same time, we think that a mechanism must be developed and recognized by the law which would permit voluntary resolution of problems in the construction industry which might lead themselves to picketing situations or striking situations, which would use picketing as one weapon.

And I think that is the basic thrust of the Secretary's comments, and certainly that is the thrust of the proposed changes to this bill which we have recommended, both in the House and again here in the Senate.

Senator TAFT. Mr. Chairman, just to clarify the question.

Am I correct in saying that the owner situation, where he does direct contracting of each of the various trades, that the secondary boycott provisions of the law would not apply—so we are not concerned with this in the legislation?

If that is not true, I would like to be corrected.

Mr. KILBERG. Senator, I would not phrase it quite that way. I wouldn't say that where there is a direct owner-contractor relationship, absent a general contractor—the owner serving as his own general contractor, in essence—that the secondary boycott provisions do not apply. I think that 8(b)(4)(B) is still a viable section of the law.

The question is whether this amendment would get at that kind of situation, and one can argue that both ways, because the amendment does talk in terms of contractors who are in the relationship of a joint venture or who have a subcontractor-contractor relationship to one another.

And so the argument can be made that in that situation you would not have the contractor-subcontractor relationship, and therefore the proviso that this would add to 8(b)(4)(B) permitting picketing of the situs commonly might not apply, and you would be back to the *Moore Drydock* standards.

I am not suggesting that this is the sole interpretation. I am just suggesting that that is one way that the proviso can reasonably be read. And the Congress may wish to clarify that in legislative history.

The CHAIRMAN. Mr. Secretary, you represent a Comstock lode of information, experience, and wisdom in this area. It is a temptation to just draw down as much as we can.

But I must restrain myself and turn to my colleagues here. But I hope you are not under any awfully tight time constraints.

Secretary DUNLOP. I am at your disposal.

The CHAIRMAN. We go from left to right here in alternating fashion, so Senator Taft is the next inquirer—the liberal left will come next, Hathaway. You can take that out of the record, if you want to.

Senator HATHAWAY. I may. I will reserve judgment.

Senator TAFT. Thank you, Mr. Chairman. I will try to be brief, although I share your feelings that there is a tremendous store of information here that we may have to call upon frequently.

Particularly, I noticed the comment that you made, Mr. Secretary, with regard to—it is on page 2 of your testimony—with regard to the leadership status, insofar as a decline in the respect for leadership from national union and contractor groups alike.

Do you think that there is a similar leadership problem at the local level as well?

Secretary DUNLOP. Yes; I do, in the sense that many local union officers and local contractor association officers in recent days have found their positions and experience less able to carry the day on sensible proposals in negotiating.

I think we may, hopefully, be approaching a day when that is turning around. You will recall that the Mediation Service in the late 1960's and early 1970's published numbers on the proportion of collective bargaining agreements initially negotiated which were turned down in the ratification process. That was a tendency in industry generally, not only construction.

You see, the local union officers, as the national union officers, have, I think—and their association people as well—a pretty good understanding of the economic realities of the industry and how certain conditions of work, pay arrangements, have tended to undermine the competitive position of the union segment of the industry, or the collective bargaining segment of the industry.

That is well understood, I think, in many sectors by these officers at both levels. But it is not always fully understood by the individual members.

And I do agree with you that the same problem, the same nature of the problem, exists at both levels.

Senator TAFT. I have gotten some indication of that, talking to people in my own area. I think it is true that there seems to be a feeling that the ratification process itself is perhaps a factor in building that, although, as far as I can find out, there is no legal requirement for a ratification process to be used other than the union constitutions themselves.

I noted with great interest your comment on the necessity for taking a look at the whole bargaining situation in this industry. And I would welcome any suggestions that may be forthcoming in this regard.

I wonder if you would comment on your feelings with regard to the relationship between this legislation and the common situs picketing legislation, and such other suggestions. Are they inextricably intertwined? Or is this something that we can move on separately? How do we tie the two together? Should it all be in a package, if we are going to make other changes? Or are there problems with that, that we ought to go ahead separately? Or are there other problems that exist, that we go ahead separately?

Secretary DUNLOP. Well, I appreciate your question, Senator Taft. I am not in a position to comment as definitively on that as perhaps I would like, but I would like to be helpful with these comments.

In the main, this particular piece of legislation before the committee today and my suggested changes to it, deal, you might say, clearly with a very narrow, very technical, complex problem that has been with us for 20-some years, during which, by the way, proposed solutions have evolved gradually. The present bill is not the same bill that the Congress considered earlier. For example, a provision has been added restricting the use of picketing with regard to discrimination on the grounds of race, color, creed, or national origin.

And over the years this narrow, technical piece of legislation has been expanded to incorporate a number of those suggestions.

Now, the area to which I referred at the end of my testimony, Senator, is quite the opposite. It is a broad, general framework matter. And, therefore, I think, on balance, we would get further along if they were not incorporated in the same piece of legislation, although it is my considered view that they should follow on very closely.

And that is why I said in my statement that I would like to appear, come back to the committee, with its permission, soon, to present those broad views.

So I think that since one is very narrow, very technical, and has a life and a history of its own, that ought to go forward separate from the broader piece of legislation that I have in mind.

Now, secondly, this legislation that you are considering today appears as an amendment to the Taft-Hartley law, Labor Management Relations Act of 1947, as amended. The sort of legislation that I have had in mind would not, from my perspective, be regarded as an amendment to that law, but would be a separate piece of legislation, standing on its own feet, dealing with collective bargaining and the structure of bargaining in the construction industry.

Senator TAFT. Just one more question, Mr. Chairman. While I have a great many more, I will yield to Mr. Hathaway, so he may get some in.

With reference to the *Boy's Market* case, how vital do you think that condition is to this legislation being a workable, viable formula for approaching the problem? In other words, do you consider that the clarification of the right to injunction on a no-strike clause is a vital part of legislation in this area, and ought it be included in this bill?

Secretary DUNLOP. I am not sure I understand the question fully. Let me put it this way. Mr. Shultz proposed this principle as an important one to him. In my statement, I have adopted that principle, but it is our view—and I would like the Solicitor to speak to it—that the Supreme Court's decision in the *Boys Market* case satisfies the principle that no-strike clauses in contracts should be enforceable by injunction.

Mr. KILBERG. There is very little that I can add to that.

Senator TAFT. You say that legislation on the subject is unnecessary, even if we go through with this amendment to the act?

Mr. KILBERG. Yes. The *Boys Market* case adequately handles those situations and certainly handles the principle that George Shultz stated in 1969.

Senator TAFT. Thank you very much, Mr. Chairman. I will yield at this point.

Senator HATHAWAY. Thank you, Mr. Chairman. Dr. Dunlop, it is a pleasure to see you again. I just want to ask you one question.

I assume, from your testimony, that if we incorporate in the bill the suggestions that you make with regard to notice of intent to picket, and so forth, that the administration will support the bill?

Secretary DUNLOP. I am here, Senator Hathaway, as an authorized spokesman for the administration, yes, sir.

Senator HATHAWAY. So that it is true that it would support it?

Secretary DUNLOP. Yes.

Senator HATHAWAY. Fine. And with the backing of all of the national contractors, right? I say that, because I have received no letters from any contractors who say they are in favor of the bill,

regardless of how you doctor it up. But I suppose it would be difficult to accommodate all of their objections.

I do have, Mr. Chairman, some questions in writing from a constituent contractor that I would like to submit to the doctor, which he may answer in writing for the record at any time, as long as the record is still open.

Thanks very much.

The CHAIRMAN. Well, Senator Javits, we have had a very fine full hour with Secretary Dunlop. Do you want to——

Senator JAVITS. Yes. I have a witness in every room this morning. Every committee is trying to get in under the wire today.

But I had a couple of suggestions that I would like to try out on you.

Secretary DUNLOP. Yes, Senator.

Senator JAVITS. I am for the situs picketing bill, I have been for years. I am concerned about organizational picketing with the use of this measure. In other words, as I understand it from my assistants, you have suggested that picketing be limited to 30 days, which picks up the limitation contained in section 8(b)(7) on organizational picketing.

What about the question of any organizational picketing at all, under this particular measure, that is, barring it, so that you couldn't use the situs picketing bill for the purpose of trying to organize? Or trying to settle a craft dispute?

Secretary DUNLOP. Well, Senator Javits—as you know, I am not a lawyer—but let me try to answer what I understood your question to be, this way.

With respect to the picketing here in this sort of situation for the resolution of jurisdictional disputes, it is my understanding that that is precluded by the statute, and nothing in the proposed amendments would legalize picketing, striking, that was otherwise illegal in this area.

So that is the first comment.

On the organizational picketing, if I understood your question, I think I would not favor it. The reason for it is this. One of the——

Senator JAVITS. Might I interrupt to say that I don't either, but I wanted to get your reasoning.

Secretary DUNLOP. Well, let me very briefly explain why. One of the problems that is fundamental to industrial relations in the construction industry is that no one has ever figured out a way to hold elections or, more generally, to provide an orderly way for resolution of the procedures to establish collective bargaining relationships.

Now, I am aware that the NLRB has on occasion held a few individual project elections—I certainly know that. But the fact of life is that that has absolutely almost no relationship to the collective-bargaining process.

The reality of bargaining is on an area basis, and for a very good reason. And I myself organized with the NLRB—Bob Denham, who was then general counsel—in 1948 one of the few areawide elections that has ever been held in this industry, in the western Pennsylvania heavy-highway construction industry. But that process has not been carried forward. And I think in an industry in which there are not orderly processes for elections and resolving the organizational dis-

putes that are available to all other parts of the American economy leaving the public sector for a moment aside—I think that that would be a further and undue restriction.

Senator JAVITS. Well, we agree and I just thought we ought to shut the door on any such alternative.

The last question you may not be in a position to answer here and now—and that is fine, is this, would it be possible to consider any means by which the size of a controversy leading to the picketing could be a factor in the use of the situs picketing amendment?

In other words, what employers complain about very, very seriously is, if we pass this bill—we have had this struggle for years—that almost any single worker getting out of the wrong side of the bed in the morning can come to work and call all his people off, hence everybody else off—and just no control, very much like wildcat strikes, except this time they would be legal.

Now, as I say, you may not——

Secretary DUNLOP. I would like to comment on that, because I have thought about that sort of problem, Senator Javits, for a long time.

And I want the record to be clear that my interest over these 30 years in working in labor relations in this industry has been always on the side of trying to establish orderly procedures.

First of all, the recommendations which we have made to this committee in my testimony today, for the fact that such picketing could not take place without the authorization, explicit authorization, of the national union, is designed to prevent, to shut off at the source, the kind of irresponsible picketing, getting up in the morning, that you referred to a moment ago.

And, second, the 10-day period of notice is designed for people to get the facts at national level, designed to have a certain kind of reflection about the conduct that is about to be taken, the opportunity for interchange between responsible national and local people over the nature of the dispute—and the like. In other words, the procedure which I have recommended in the amendments that we would propose are designed precisely to meet the point, the question that you raised.

Senator JAVITS. And you think they were effective for that purpose?

Secretary DUNLOP. I certainly do, Mr. Chairman.

Senator JAVITS. Mr. Chairman, I am very grateful to the Chair.

The CHAIRMAN. One by one. Senator Stafford?

Senator STAFFORD. Mr. Chairman, I have just arrived due to other committee assignments, and I don't have any questions.

The CHAIRMAN. We have had a very, very productive session, Mr. Secretary. Thank you very much, John.

[A document supplied by Secretary Dunlop along with his prepared statement follows:]

June 5, 1975

Part-Time Assignments in the Construction Industry

1. Wage Adjustment Board, 1943-47
(World War II dispute settlement and wage stabilization machinery; public member of tripartite body representing National War Labor Board.)

2. National Joint Board for Settlement of Jurisdictional Disputes, 1948-57
(Chairman, private contractor-union board to resolve jurisdictional disputes in construction.)

3. Atomic Energy Labor Relations Panel, 1948-53
(Member of 5-member governmental panel for atomic agency disputes; special responsibility for construction disputes.)

4. Construction Industry Stabilization Commission, 1951-53
(As a public member of the tripartite Wage Stabilization Board in the Korean period, responsible for subsidiary tripartite agency in construction.)

5. Construction Industry Joint Conference, 1959-68
(Impartial chairman of private labor-management group to deal with a variety of construction industry problems.)

6. Missile Sites Labor Commission, 1961-67
(Public member, chairman of the construction group, of tripartite governmental panel to resolve disputes affecting missile sites.)

7. Appeals Board, Jurisdictional Disputes, 1965-68
(Chairman of private appeals body to resolve jurisdictional disputes.)

8. Construction Industry Collective Bargaining Commission, 1969-71
(Public member of governmental tripartite commission to deal with wide range of construction problems; Executive Order 11482.)

9. Construction Industry Stabilization Committee, 1971-74
(Chairman, 1971-73, tripartite committee to control wages and resolve disputes during latest period of controls; Executive Order 11588.)

10. Collective Bargaining Committee in Construction, 1975--
(Chairman, labor-management committee recently appointed by President Ford; Executive Order 11849, April 1, 1975.)

John T. Dunlop

STATEMENT OF JOHN T. DUNLOP
SECRETARY OF LABOR
BEFORE THE
LABOR SUBCOMMITTEE
COMMITTEE ON LABOR AND PUBLIC WELFARE
OF THE
UNITED STATES SENATE

July 10, 1975

Mr. Chairman and Members of the Subcommittee:

I appear before you today to discuss S. 1479, a bill designed to remove certain restrictions upon peaceful labor picketing at construction and building sites. On June 5, I appeared before a subcommittee in the House of Representatives on a similar bill, H.R. 5900 to provide similar testimony. Accompanying me today is William Kilberg, Solicitor of the Department of Labor.

I would like to begin by briefly outlining some background concerning recent collective bargaining in the construction industry.

The industrial relations climate in the construction industry under collective bargaining improved significantly in the period 1971-1974, it is generally agreed, following years of deterioration after the middle sixties. Only the superficial observer would confine attention to the marked retardation in the rate of wage and benefit increases under the Construction Industry Stabilization Committee. (First year increases declined from 15-17 percent in 1970 to 5.4

percent for wages and fringes in 1973.) No less significant was the marked reduction in this period in work stoppages over the terms of collective bargaining agreements; the widening of the geographical and craft structure of negotiations in many localities; the differentiation of wages and conditions in many localities to particular branches of the industry, such as housing and heavy and highway work; the rationalization of work rules and conditions in many areas; the greater cohesiveness and devotion of the national labor and contractor leaders to the problems of the industry; and the greater understanding and organization of the owners in their concern with construction. I wish to pay my respect to the courage and responsibility exercised by the national union and contractor officials in the public interest in that period.

It was not possible to maintain this momentum in the industry with the disappearance of wage and price controls in construction on May 1, 1974, despite my repeatedly advance urgings. Some parts of the country have reverted to the former malaise of widespread stoppages, whipsawing negotiations, disregard for productivity, excessive increases, and to a decline in the respect for leadership from national union and contractor groups alike. The long-term state of the industry and national interests understandably attracts local people much less than the national leaders on both

sides. But the national leaders on both sides are largely without authority to deal with the problems of local bargaining, although a number are courageously seeking to use their influence constructively in a limited number of situations.

Into this somewhat volatile situation at the height of the bargaining season enters another stage in the legislative debate over situs picketing after a lapse of 6 years. I want to say publicly what I have been saying in recent weeks to all segments of the industry. I implore all interested parties to conduct the discussion and the resolution of these sensitive issues factually, dispassionately, realistically, and in tolerance and good humor. Only a reasoned discussion can encompass the complex conditions that characterize the industry. Moreover, I would hope that these discussions can be carried on in a way not to exacerbate industrial relations in the industry, but rather to contribute to greater understanding and resolve to get this and other basic problems behind us. The industry is far too important to the country.

The common situs issue has a long history with which many members of this Subcommittee are familiar, indeed, more familiar than I am with the legislative background. The Taft-Hartley amendments to the National Labor Relations Act prohibited union efforts aimed at a neutral employer to have him cease doing business with the employer against whom the union had a dispute. Although such "secondary boycotts"

became unlawful, a union's right to engage in a strike or picketing against the primary employer was preserved. In interpreting the secondary boycott prohibition under circumstances where there was more than one employer at a worksite, the courts and the NLRB drew a sharp distinction between lawful primary picketing in a general industry setting and lawful primary picketing on a construction site. In general industry, the interpreters of the law had no difficulty in determining that picketing of the entire plant site was, ordinarily, lawful primary activity. In construction, a project with many different contractors was not considered a site which could be broadly picketed. Complex restrictions were placed upon activities at construction sites.

Turning to the bill itself, S. 1479 would amend the secondary boycott provisions of the NLRA to make it clear that certain activities affecting secondary employers engaged as joint venturers or in the relationship of contractors and subcontractors with a primary employer on construction projects are not prohibited. The bill also contains a requirement of 10-day notice to the Federal Mediation and Conciliation Service for disputes involving defense or NASA facilities. The bill further provides that certain other kinds of activities are not permitted: (1) activities otherwise unlawful under the NLRA; (2) activities in violation of an existing collective bargaining agreement; (3) activities when the issues in the dispute involve a union

which represents employees of an employer not primarily engaged in the construction industry; and (4) picketing for the purpose of excluding an employee because of race, creed, color, or national origin.

Both sides in the construction industry have long been of the general view that a construction site should have a common labor relations policy regardless of how many separate contracts or contractors, prime or subcontractors, are involved. The mixing of labor policies is not conducive to industrial peace, productivity, or good management. Despite short-term presumptions in many quarters, it is not clear whether the adoption of this principle in this legislative form will enhance or reduce the segment of the industry that operates under collective bargaining agreements.

The basic proposal embodied in S. 1479 has a long history of bipartisan endorsement. Over the past 25 years, four Presidents, all Secretaries of Labor, and many Members of Congress from both parties have supported enactment of similar legislation. (See Secretary Shultz's testimony on April 22, 1969 before the House Committee on Education and Labor for a full account.) For example, in 1954 President Eisenhower's labor-management relations message recommended clarification of the NLRA, making it specific that concerted action against an employer on a construction project who, with other employers, is engaged in work at the site of the project, will not be treated as a secondary boycott.

For my own part, in the words of former Secretary of Labor George P. Shultz, "I am here today to indicate my support for legislation to legalize common situs picketing, if that legislation is carefully designed to incorporate appropriate and essential safeguards."

At that time, Secretary Shultz enunciated several guidelines or principles which he felt should be reflected in such legislation. First, other than common situs picketing, no presently unlawful activity should be transformed into lawful activity. Second, the legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects. Third, the interest of industrial and independent unions must be protected. Fourth, the legislation should include language to permit enforceability of no-strike clauses of contracts by injunction. Fifth, the legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing.

Most of the principles which concerned Secretary Shultz have been met by the present bill, or have been the subject of subsequent developments in case law, or can be dealt with by appropriate legislative history. For example, one

significant potential source of unlawful activity which should not be protected is picketing which has the objective of excluding any employee on the basis of race, creed, color or national origin; the bill's antidiscriminatory provisions are clear in this respect. Additionally, the Supreme Court decision in the Boy's Market case satisfies the principle that no-strike clauses in contracts should be enforceable by injunction.

There is one principle suggested by Secretary Shultz which might well be substantially expanded, and I suggest that consideration be given in your deliberations to its incorporation. My reference is to the encouragement of private settlement procedures by notice to picket and authorization at a national level.

Requiring a notice of intent to picket would assure at least a limited cooling-off period, during which the immediate parties to the dispute could have an opportunity for considered evaluation of alternatives and the consequences of their proposed actions. Secretary Shultz proposed that such notice be served upon all employers and unions at the site. I would carry that proposal a step further, requiring 10 day's notice to the standard national labor and management organizations engaged in collective bargaining in the industry whose local unions or member contractors are involved in or affected by the dispute. I would also suggest the principle that authorization of such picketing by the

appropriate national union be required. The national union should be held not liable for any damages growing out of such authorized picketing initiated by local unions. Consideration might also be given to making the authorization subject to a tripartite arbitration process within the 10-day period.

The international unions and the national employer associations are the major private interested groups functioning at a national level. Notice to such organizations, which are in a position to assist in bringing together the parties to a dispute, could materially contribute to the resolution of the dispute. The parties to the dispute would have not only the benefit of a brief cooling-off period, but also the benefit of potential guidance and mediation by national organizations of unions and contractors who may be able to encourage a settlement. They could take into account the vast variety of situations which practical people recognize and which have not been recognized by the NLRB and the courts in the past. Furthermore, such notice provisions would recognize, in some measure, the interests of the other employees and employers at the site and give appropriate warning of activities which could affect them. I can envisage the development of a joint labor-management machinery to review individual cases.

Insofar as the duration of picketing is concerned, I would suggest a limit of 30 days, a period which is analogous

to that provided by section 8(b)(7) of the NLRA for recognition and organizational picketing. As with notice provisions, a limit upon the duration of picketing of the entire site strikes a reasonable balance between the right of labor organizations to take appropriate action and the need to recognize the separate identities of the employing contractors and subcontractors, as well as the potential for disruption flowing from picketing which is unlimited as to duration.

As I previously indicated, the basic principles underlying this bill have been repeatedly endorsed, on a bipartisan basis for many years. A basic and adequate legal structure recognizing the rights of the affected parties and achieving a balance among those rights is essential. But a legal framework is only one element in the overall picture. To achieve needed improvements in industrial relations in the construction industry requires a responsible exercise of those rights by all parties, and a continuing effort to work toward adjustments in many areas of dispute prevention and resolution. Mechanisms to assure resolution of problems can be developed best in an atmosphere generated by reasoned discourse.

I would like to reemphasize, therefore, that in dealing with the immediate issues of S. 1479, it is important to recognize that the atmosphere which develops on this

bill can affect, and set the tone for, the approaches to other problems of industrial relations in the construction industry as a whole. As a practical matter, reasoned discussion calculated to promote positive solutions, or vitriolic debate enhancing bitter conflict, may well be as significant as any statute itself.

A more general comment may be appropriate. I have come to the conclusion over the past decade that the legal framework of collective bargaining in the construction industry is in need of serious review. On January 28, 1975, in a unanimous statement the leaders of labor and management operating under collective agreements in this industry also expressed the view that "it is timely for labor and management to explore . . . a more viable and practical legal framework for collective bargaining." A vastly enhanced role for national unions and national contractor associations, working as a group, is essential in my view if the whipsawing and distortions of the past are to be avoided and if the problems of collective bargaining structure, productivity and manpower development are to be constructively approached by the industry itself, and in cooperation with governmental agencies.

I should like to bring back to the Committee before long detailed suggestions and proposed legislation dealing generally with collective bargaining in the construction industry.

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The Department of Labor will be available to the Committee to explore the suggestions which I have made in this testimony on situs picketing and to work with the Committee on the range of issues involved in S. 1479.

Thank you for the opportunity to present my views on these issues. I shall seek to answer any questions you may have.

The CHAIRMAN. Mr. Robert A. Georgine, president of the Building and Construction Trades Department of the American Federation of Labor, Congress of Industrial Organizations.

This is, I believe, Mr. Georgine's maiden appearance in this new and high responsibility that he has. We are very grateful that we can have him so early in our hearings on this subject.

You may introduce your colleagues, Mr. Georgine, and proceed as you desire.

STATEMENT OF ROBERT A. GEORGINE, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL–CIO, ACCOMPANIED BY LOU SHERMAN, GENERAL COUNSEL, AND DAN MUNDAY, LEGISLATIVE DIRECTOR

Mr. GEORGINE. Thank you, Mr. Chairman and members of the Labor Subcommittee. I have with me Lew Sherman, our general counsel for the Building and Construction Trades Department of the AFL–CIO, and Dan Munday, who is our legislative director for the Building and Construction Trades Department.

And I would like to thank you very much for according me this opportunity to express my views in support of S. 1479, introduced by Senators Williams and Javits.

And if it is acceptable to this committee, and with the permission of the distinguished chairman, I shall not read the full statement I have brought with me. I should, however, like to request that it be made a part of your records and available to any members or staff who may be interested.

In addition to my own testimony, I would like to submit for the record testimony from the following unions affiliated with the Construction Trades Department:

International Brotherhood of Electrical Workers.

United Brotherhood of Carpenters and Joiners of America.

Operative Plasterers and Cement Masons International Association.

Bricklayers, Masons and Plasterers International Union of America.

International Brotherhood of Painters and Allied Trades.

International Association of Heat and Frost Insulators and Asbestos Workers.

International Union of Operating Engineers.

The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States of America.

[The documents referred to may be found in Appendix A.]

Mr. GEORGINE. Furthermore, I should like the chairman and the committee to know that if any additional material is desired on any point I make, the Building and Construction Trades Department will be most happy to try to fulfill your request.

Mr. Chairman and members of this committee, at the very outset of my remarks I tell you that there is nothing of a legislative nature that is more important to the 3.5 million building and construction tradesmen of this Nation than a bill which provides for equal treatment for them on disputes at construction job sites.

I want you to know that this is no exaggeration. You may think that the construction industry, especially the construction workers,

have a lot more to think about these days than the success or failure of a measure such as S. 1479.

Our members are out of jobs by the hundreds of thousands. Inflation is hitting us harder than it is hitting any other segemnt of our society, because the building and construction industry was the last industry to be removed from governmental controls and, therefore, did not keep pace with the rising inflation and the rising cost of living. And because the unemployment picture in the construction industry is more than twice—and for many trades in many cities more than 10 times—the jobless rate of other businesses and enterprises.

So why is this bill of such importance? Because, gentlemen, for the very simple reason that a fundamental principle is involved.

It may sound a little corny. It may sound like flagwaving. But building and construction tradesmen cannot understand why they do not have the same rights that are accorded other citizens of the United States.

A number of opponents of organized labor are trying to obscure this situation. They are seeking to throw up all kinds of beclouding issues and scare tactics regarding what the bill might do or could cause or would result in.

In the simplest, most sincere language I can muster, the plain, unadulterated fact is that the legislation being sought by the AFL–CIO Building and Construction Trades Department is to eliminate the different treatment now accorded to picketing at a construction site and to picketing at a manufacturing site.

It is nothing more and nothing less. There is no mystery about what is being sought or why it is being sought.

We are merely seeking equal treatment under law.

Stated simply and honestly, the legislation requested by the building and construction trades would neither modify nor weaken the prohibitions against secondary boycotts.

It would protect the economic rights of construction labor without harming the rights of neutral employers.

It would not lessen the current statutory protection of true neutral employers in any way, nor would it spread labor disputes beyond the immediate parties.

It would serve to decrease costs by eliminating the expensive effects of lower productivity, work slowdowns and illegal strikes which stem from the construction workers' lack of legal redress. A legitimate means will now be available to the worker to express his grievances.

Incidentally, I would like to point out that there is little evidence that the cost of construction is directly attributable to the wage rate. Good management, the higher productivity of trained union labor and the design are more important determinants of a job's cost.

It would permit picketing only where the methods and objectives are lawful. A labor dispute must not be in violation of any existing collective bargaining agreement. Thus, the legislation sought by the building trades would not protect unlawful picketing, nor would sudden or wildcat strikes in violation of a no-strike clause in any existing collective-bargaining agreement be permitted.

It would assure equal and nondiscriminatory treatment for construction and nonconstruction unions alike.

It would contain safeguards to prevent the use of strikes for racial discrimination and take cognizance of the requirement for national security.

There is ample precedent for the legislation desired by the building and construction tradesmen, both in the Taft-Hartley Act itself and in the numerous decisions construing it.

Moreover, there is a long history of support for legislation previously introduced for this purpose. Perhaps, this is why the opposition is panicking.

Four Presidents—Truman, Eisenhower, Kennedy, and Johnson—spoke in favor of efforts to end the inequitable dual standard for picketing by construction unions and for picketing by unions at a manufacturing or office site.

The Secretaries of Labor of these four Presidents, as well as the Labor Secretaries of the Nixon and Ford administrations, each testified before the Congress in favor of various proposals to permit construction site picketing.

For just a moment, I should like to try to explain a few realities of the construction industry. It may help in an understanding of what we really want and why we really want it, claims of our long-time enemies to the contrary notwithstanding.

Buildings or projects are rarely designed and built by one firm or company. Instead, they are usually the products of the combined efforts of many firms or builders, who may or may not have a direct contractual relationship with each other. Each one of these building firms undertakes a special part of the construction.

For example, there may be one contractor for excavation and for concrete work, or a general contractor for erecting the basic foundation and frame of the construction. Brick, tile, siding or masonry may be separately contracted or subcontracted. So is plumbing, heating, and air-conditioning. Sprinkler systems are nstalled by another group of contractors. Lathing and plastering and drywall systems by subcontractors.

All of these contractors must work together as a team. Careful coordination is essential to success. Either the owner or architect-engineer or the general contractor must weld these contractors and their workers together into one unified group.

Indeed, it is advisable for each contractor to know as much as possible about the other contractors who may be chosen to perform some other phase of the work on the same construction project, because each can affect the ability of the other to perform.

For dozens of reasons, it cannot be truthfully said that the contractors on the same construction project are strangers to each other or are neutral or innocent third parties so far as labor policies and industrial relations are concerned. To the contrary, it is crucially important for every contractor to know whether or not the other contractors on the job secure their workmen pursuant to and in accordance with a collective bargaining agreement between the contractor and a building trades union. The existence or absence of such an agreement may make all the difference between harmonious and stormy industrial relations in the course of contract performance.

Despite the very close relationships between contractors and between workers on construction projects, nevertheless recognized legal

differences persist. Each contractor is a separate and independent entity. Each is a separate and independent employer of his own labor. Workmen jointly engaged on the same project at the same time may be employed by as many as a dozen separate and distinct but functionally closely related employers. These are, as Mr. Justice William O. Douglas describes them in his dissent in the *Denver* case, "fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned."

Yet they do have significance so far as section 8(b)4(B) of the National Labor Relations Act is concerned. This section makes it an unfair labor practice for a labor union to induce employees to refuse to work with an object of forcing one contractor or employer to cease doing business with another. A strike against a union contractor which protests employment of nonunion men by another contractor on the job would, according to the *Denver* case, violate section 8(b)4(B).

As pointed out in the dissent in the *Denver* case,

> The picketing would undoubtedly have been legal if there had been no subcontractor involved. The presence of the subcontractor does not alter one whit the realities of the situation; the protest of the union is precisely the same.

Thus, construction workers do not enjoy the same rights and privileges conferred upon factory workers. Due to technical contractual relationships on the construction job site, given express recognition in the *Denver* case, these workers are effectively denied the right to strike to secure union conditions even though this right is effectively preserved for factory workers.

Now, I will not go into any further detail at this time. As I said in the beginning, this is included in the full text I have submitted. We shall be delighted to fill in any gaps which may trouble the committee members.

Let me conclude with a few observations:

The Taft-Hartley Act, as interpreted for nearly 30 years, has been applied unfairly to construction workers.

It has made the building trades unions and members legally powerless to protect themselves while, at the very same time, it has given a construction employer a virtual license to destroy unions with impunity.

The disparity of treatment is heightened because building tradesmen cannot in fact enjoy the protections of the act.

For instance, certification elections are almost impossible to conduct. Even when an election is finally completed, an employer is still free to refuse to bargain until the project is completed. Or an employer can precipitate a strike by union followers, whom the employer is then free to replace. But the union cannot appeal to any other union employees working at the project.

The destructive results of all this are manifold. A much higher percentage of construction work is being performed nonunion and the trend is accelerating, even in formerly highly organized areas.

National contractor associations are conducting schools across the United States, by lawyer-teachers, who train union contractors in how to convert their union into nonunion operations which are protected by the unfair provisions of the Taft-Hartley Act.

The present statute, as applied, has placed all the legal weapons in the hands of the contractors.

The stability of long-established, collective-bargaining relationships has been eroded.

Must the building and construction trades remain silent while we are being destroyed?

The *Markwell and Hartz* rule established by 3–2 majority of the NLRB allows the picketing to be legal or illegal dependent upon the contractors. The employer can convert legal picketing into illegal picketing by a stroke of the pen. By merely establishing a reserve gate.

It would seem that sound public policy cannot permit employers on hundreds of thousands of construction projects to be free to stack the cards any way they want and then deal, without at least permitting building tradesmen to cut the deck.

Certainly, it seems reasonable and fair that unions in the building and construction industry at least should have the right to publicize peacefully, by picketing, the fact that an employer subcontracts part of the job to a nonunion subcontractor, who very easily might have won the bid for the subcontract because he pays substandard wages.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Georgine.

I wonder if you could amplify a bit on one of your earlier points; page 4 of your statement you say, referring to this legislation, it would protect the economic rights of construction labor without harming the rights of neutral employers.

Now, the neutral employer situation, I wonder if you could flesh that out a little bit for us?

When we have a construction site, it is the theory of the bill that all of the trades going into construction are part of the enterprise.

Now, who could be, as you describe it, a neutral employer on a construction site?

Mr. GEORGINE. As we view it, Mr. Chairman, on a construction site, all employers who are involved in working on that particular project for a particular foreman or general contractor are all interrelated, all dependent one upon the other. You cannot complete the job without the work that one of those contractors has to do.

Therefore, we feel very strongly that all of the contractors or subcontractors involved on a particular project for a particular general contractor cannot be neutral.

The CHAIRMAN. All right. So you mentioned that the rights of neutral employers would not be affected and would be protected.

Let me suggest you have a plumbing contractor, with a company supplying the pipe to the site. Would that company be a neutral employer?

Mr. GEORGINE. The company supplying the site?

The CHAIRMAN. Supplying the pipe to the contractor, the plumbing contractor on the job, would he be a neutral employer?

Mr. GEORGINE. Yes, that would be—that does not apply.

The CHAIRMAN. He is a neutral employer?

Mr. GEORGINE. Yes.

The CHAIRMAN. The plumbing contractor?

Mr. GEORGINE. Is not neutral.

The CHAIRMAN. He is not a part of the enterprise, he is not a neutral in your terms?

Mr. GEORGINE. That is as we view it.

The CHAIRMAN. Someone off the site who might be supplying a subcontractor would be a neutral in this sense?

Mr. GEORGINE. In what you have described it, yes. We feel he would be completely neutral.

Mr. SHERMAN. Or you might have some case where you get the bright idea of going up to the brokerage house of the employer on the job and picketing him there—true neutral employer, nothing to do with him at all.

The CHAIRMAN. I wonder if you could draw your microphone a little closer, Mr. Sherman?

Mr. SHERMAN. I was saying in the legislative history of the Taft-Hartley Act, very interesting case of boycott to neutral employers would be strike at point A, which is the site of construction, and the fellows would go around to the brokerage house with which the employer was dealing and picket him there, and things of that sort. Certainly show a neutral employer.

The CHAIRMAN. You are using brokerage house in an uncommon sense, that the layman not affected with construction is not familiar with.

You are talking about the brokerage house——

Mr. SHERMAN. Stocks and bonds.

The CHAIRMAN (continuing). Where contractors——

Mr. SHERMAN. I am talking about stocks and bonds.

The CHAIRMAN. You are not?

Mr. SHERMAN. I am.

The CHAIRMAN. Oh, you are?

Mr. SHERMAN. That was an actual case.

The CHAIRMAN. Oh. Well, I am wrong then. And I do not understand the point.

Mr. SHERMAN. Trying to give an extreme illustration of what neutral employer is. Brokerage house has nothing to do with any dispute.

The CHAIRMAN. That would be an extreme case. [Laughter.]

We have to move on.

I would like to ask about one of your last points, Mr. Georgine; a contractor who has an agreement with the union that his jobs will be union jobs, now under the law how broadly can you reach with such an agreement?

You certainly cannot enter an agreement with a national contractors's association, can you?

I just wondered how far up the level within the union and on the contractors side you can go to reach this kind of an agreement where the contractor will be a union contractor?

Mr. GEORGINE. We can enter into an agreement with national contractors, and we do.

The CHAIRMAN. In other words, one of your building trade unions, a national union, can enter a national agreement?

Mr. GEORGINE. Certainly, We have many. We have many national agreements existing today. We have a whole association of national contractors, National Constructors Association, who have national agreements with individual international unions on specific types of work.

We have a national agreement between four unions and the pipeline industry.

We have national agreements; it is not uncommon.

The CHAIRMAN. Your point is contractors that have a union agreement are creating subsidiaries?

Mr. GEORGINE. Yes. That is another problem.

The CHAIRMAN. There is a phrase for this; do they not call this doublebreasted?

Mr. GEORGINE. Doublebreasted.

The CHAIRMAN. Yes.

Mr. GEORGINE. There is nothing stopping a contractor from creating another firm, another contracting firm, with a different name. He can use the same offices and same officers and everything else, and just for the sole purpose of circumventing the provisions of the collective bargaining agreement. And we do not have any protection against that type of an operation. These are the kinds of things that, as I mentioned in my statement, these lawyer-teachers working for these national associations are doing. They are going around and instructing their union contractors on how to do this type of thing and how to circumvent the terms of the collective bargaining agreement for which we have absolutely no protection.

The CHAIRMAN. Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

Mr. Georgine, I would like to ask you, if you would, to comment on the conditions that Secretary Dunlop went over this morning, originally enunciated by Secretary Shultz, as factors that the Department of Labor felt ought to be included in legislation of this kind, and specifically let's just run through them.

First, that other than common situs picketing, no presently unlawful activity should be transformed into lawful activity.

Do you have any——

Mr. GEORGINE. We say that this act will not do that, that the bill you have before you will not convert a presently unlawful activity into a lawful activity.

Senator TAFT. So a condition of that sort you would not see any particular——

Mr. GEORGINE. No.

Senator TAFT. Second, legislation should not apply to general contractors and subcontractors operating under State laws requiring direct and separate contracts on State or municipal projects.

Mr. GEORGINE. Yes, we have agreed that those are not within the scope of this act.

Senator TAFT. Third, the interest of industrial and independent unions must be protected. This is one that I am not sure I really understand the mechanics of.

What do you see language like that meaning and what would your reaction be to such language in the legislation?

Mr. GEORGINE. It is in there already.

Do you want to elaborate on that?

Mr. SHERMAN. Well, the bill is applicable to enterprises which are jointly engaged—not jointly engaged in the situation you have described.

Senator TAFT. So you do not see any objection to that kind of a provision. I think it is——

Mr. SHERMAN. It is in the bill already.

Mr. GEORGINE. It is in the bill. We feel it is in the bill and they are protected; industrial unions do not have any problems with it.

Mr. SHERMAN. We have very serious problems with industrial unions. They have all been straightened out.

Senator TAFT. How about the independent unions?

Mr. SHERMAN. The independent union we think has been taken care of adequately, but there can be some differences of opinion.

Senator TAFT. How about the fourth provision that the legislation should include language to permit enforceability of no-strike clauses of contracts by injunction?

We have already discussed that as the *Market* case.

Mr. SHERMAN. We are not here to reverse the *Market* case.

Senator TAFT. You are not trying——

Mr. SHERMAN. That would involve a strike in violation of the agreement and a provision in the agreement for arbitration.

Senator TAFT. So if that language were included, if we specifically wrote it into the bill, it would be meaningless but you would not see any particular objection to it?

Mr. SHERMAN. Well, seeing the amendment, the necessary preliminary——

Senator TAFT. Yes. Then fifth, the legislation should encourage the private settlement of disputes which could lead to the total shutting down of a construction project by such means as a requirement for giving notice prior to picketing and limiting the duration of picketing. Specifically, of course, Secretary Dunlop was talking about a 10-day notice, not only to FMCS but also to the International Union, and approval of International Union one of his conditions as well.

He also mentioned the 30-day limit upon the picketing would be involved.

Would you comment on those provisions?

Mr. GEORGINE. Let me say on the first issue, we feel that the reason we are here and what we have been trying to do over the past 25 years really is to get equal treatment for construction workers insofar as pickets and construction situs are concerned.

This type of provision or restriction is not imposed upon an industrial union or factory workers and really we would not like to see any restrictions imposed upon construction workers. However, we feel that we need this legislation so badly that we would be willing to discuss that——

Senator TAFT. Let's separate out this last question, because I realize there are several things involved in it.

Let's talk, first of all, about the question of approval by the international.

Mr. GEORGINE. That is what I was addressing myself to at that particular point.

Insofar as the 30-day limit is concerned, I think that is a provision that would prove to be completely counterproductive.

Let me explain. The limit would really become a floor. A dispute would exist between the employer and the union, the contractor and the union, and if the dispute went beyond 6 or 7 or 8 days, the employer would certainly take the position we have gone this long, let's wait out the 30 and then we do not have any more problems after that, they will have no vehicle with which to protest.

I think that in itself would make disputes last longer than they ordinarily would.

On construction sites, most disputes are resolved within days. It is not a thing that is prolonged. There may be the individual case where it is a very tough issue and it may go a little longer. But I think once you set a limit and understand that limit, that is not imposed upon anyone else, you will find people who will go to the limit and then forget about it. I think it would be completely and totally counterproductive.

Senator TAFT. As to the 10-day notice and approval of the international, you do not feel so strongly?

Mr. GEORGINE. That would affect some of our smaller contracts where they might be completed, say a painting contractor who could complete his painting in 3 or 4 days on a particular job, it would be a hardship on those kinds of contracts. If it means passage or no passage, I certainly would consider it.

Senator TAFT. Thank you very much.

The CHAIRMAN. Thank you.

Senator HATHAWAY. Thank you.

Senator JAVITS. Mr. Chairman, I feel the same way. I am very well acquainted with the views of labor on this particular subject. It has been very illuminating.

I might say I like Mr. Georgine. You are new to us. I like your sense of objectivity and evaluation of both sides and the feeling which I have always had as a lawyer, that I have never offered another lawyer a settlement I would not take myself.

Mr. GEORGINE. Thank you.

The CHAIRMAN. Thank you.

We are very grateful for your excellent, constructive statement. Thank you.

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

[The prepared statement of Mr. Georgine follows:]

STATEMENT SUBMITTED FOR THE RECORD

BY

ROBERT A. GEORGINE

IN SUPPORT OF S. 1479, A BILL TO PROTECT THE ECONOMIC RIGHTS OF LABOR IN THE CONSTRUCTION INDUSTRY BY PROVIDING FOR EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

BEFORE THE

LABOR SUBCOMMITTEE OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

JULY 9, 1975

I am very grateful for this opportunity to express my views in support of S.1479, introduced by Senators Williams and Javits, and on which your Subcommittee is now holding hearings.

S.1479 is a bill to amend the Taft-Hartley Act (National Labor Relations Act) to provide for equal treatment of building and construction trade unions during strikes which take place at construction job sites. The bill will correct and clarify the intent of Congress on the subject of secondary boycotts and bring consistency to this area of labor relations. At the present time, industrial unions are permitted to bring economic pressure to bear on employers, within the guidelines permitted by law, as long as the pressure is applied to the primary employer at the place of employment. Construction unions, however, are often prevented by a highly literal and artificial interpretation of the Act, from exerting identical pressure in similar situations because of the presence of other employers at the job site. The bill will neither modify nor weaken the prohibitions against secondary boycotts in other industries, and is clearly consistent with the underlying purposes of the secondary boycott provisions of the Act.

I would like to explain some of the background and the realities of the construction industry.

Buildings or projects are rarely designed and built by one firm or company. Instead, they are usually the products of the combined efforts of many firms or builders who may or may not have a direct contractual relationship with each other. Each one of these building firms undertakes a special part of the construction.

For example, there may be one contractor for excavation and for concrete work, or a general contractor for erecting the basic foundation and frame of the construction. Brick, tile, siding, or masonry may be separately contracted or subcontracted. All electrical work is usually separately contracted or subcontracted. So is all plumbing, heating, and air conditioning. Sprinkler systems are installed by another group of contractors. Frequently lathing, plastering, roofing, painting, sheet metal work and other similar functions, contributing to the completed project, may be performed by separate contractors.

All of these contractors must work together as a team. Careful coordination is essential to success. Either the owner or architect-engineer or the general contractor must weld these contractors and their workers together into one unified group. These circumstances create a close relationship between contractors. Indeed, it is advisable for each contractor to know as much as possible about the other contractors who may be chosen to perform some other phase of the work on the same construction project, because each can affect the ability of the other to perform. It is important, for example, for each contractor to be familiar with the methods of operation of the other contractors, including their ability to perform, their financial solvency, the nature and efficiency of their workmen and the source of their labor supply. Where a general contractor and a subcontracting system are used, it also becomes important for the owner or the architect-engineer to know in advance the identity of each subcontractor whom the general or prime contractor is going to use. Frequently, the owner or architect-engineer requires the general contractor to list his subcontractors when he submits his bid. Frequently, it is specified that the contractor cannot change

subcontractors without approval.

For these various reasons, it cannot be truthfully said that the contractors on the same construction project are strangers to each other or are "neutral" or "innocent" third parties so far as labor policies and industrial relations are concerned. To the contrary, it is crucially important for every contractor to know whether or not the other contractors on the job secure their workmen pursuant to and in accordance with a collective bargaining agreement between the contractor and a building trades union. The existence or absence of such an agreement may make all the difference between harmonious and stormy industrial relations in the course of contract performance. It is the contractor's business, therefore, to ascertain the nature of working conditions which will prevail at the job site and the risk of misestimating these working conditions is one of the normal and accepted business risks of the construction industry.

Despite the very close relationships between contractors and between workers on construction projects, nevertheless, the recognized legal differences persist. Each contractor is a separate and independent entity. Each is a separate and independent employer of his own labor. Workmen jointly engaged on the same project at the same time may be employed by as many as a dozen separate and distinct but functionally closely related employers. These are, as Mr. Justice William O. Douglas so aptly describes them in his dissent in the Denver case, supra, "fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned."

Yet they do have significance so far as section 8(b)(4)(B) of the National Labor Relations Act, is concerned. This section makes it an unfair labor practice for a labor union to induce employees to refuse to

work with an object of forcing one contractor or employer to cease doing business with another. A strike against a union contractor which protests employment of nonunion men by another contractor on the job would, according to the Denver case, violate section 8(b)(4)(B).

As pointed out in the dissent in the Denver case, "the picketing would undoubtedly have been legal if there had been no subcontractor involved. The presence of the subcontractor does not alter one whit the realities of the situation; the protest of the union is precisely the same."

Thus construction workers do not enjoy the same rights and privileges conferred upon factory workers. Due to technical contractual relationships on the construction job site, given express recognition in the Denver case, these workers are effectively denied the right to strike to secure union conditions even though this right is effectively preserved for factory workers.

SECONDARY BOYCOTTS AND THE TAFT-HARTLEY ACT

In order to understand the need for this legislation, it is necessary to review the laws governing secondary boycotts. In general terms, a secondary boycott can be defined as labor activity to influence an employer by exerting economic pressure against other persons who deal with that employer. A secondary boycott should be distinguished from a primary boycott, which is a combination to exert pressure on an employer by refusing to deal with that employer himself. While primary boycotts are permitted under most circumstances, secondary boycotts have long been restricted, limited, and even prohibited outright because of their impact on neutral third parties.

In 1947, Congress included strict limitations on secondary boycotts in the Taft-Hartley Act. As the Supreme Court later noted, these provisions embody "the dual congressional objectives of preserving the

right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." Labor Board v. Denver Building and Construction Trades Council, 341 U.S. 674, 692 (1951). The secondary boycott provision of Section 8(b)(4)(A) of the 1947 Act was framed in terms of prohibited conduct and prohibited objectives. (In 1959, the Act was amended by the Landrum-Griffin Law, and the secondary boycott provision was renumbered as Section 8(b)(4)(B). These amendments, however, did not affect the application of the section to the construction industry.) The 1947 Act prohibited union conduct which induced employees to engage in strikes or concerted refusals to work, where the objective was to force an employer to cease doing business with any other person. The Act provided for mandatory injunctive relief, and permitted money damages. The Act was phrased in general terms, however, and did not make clear the distinctions between prohibited secondary activity and protected primary activity. It was necessary for the National Labor Relations Board (NLRB) and the courts to spell out the differences on a case-by-case basis over the years.

COMMON SITUS PICKETING UNDER TAFT-HARTLEY ACT

Common situs picketing is picketing which takes place at a site where two or more separate employers are conducting their business. Although the most common examples are found at construction sites, common sites can include manufacturing plants where new construction or alterations are taking place, and dry docks where ships are built and repaired. The problem of applying the secondary boycott prohibitions of the Act to these sites is this: if picketing is permitted against the primary employer, then it is likely that employees

of the secondary employer will refuse to cross the line; but if picketing is not permitted, the union is denied its right under the Act to engage in concerted activities for the purpose of collective bargaining and mutual aid. As a result, the NLRB, as early as 1950, adopted what are now known as the Moore Dry Dock rules. That case involved a primary dispute between an employing ship and the union representing its crew, at a time when the ship was undergoing conversion in a dry dock owned by the secondary employer. The union could not picket the ship itself because it was denied access to the premises of the dry dock company, so it placed a picket line at the main gate, indentifying the ship rather than the dry dock as the object of its picketing. The Board upheld the picketing because it met the following criteria:

A. The picketing was strictly limited to times when the situs of dispute was located on the secondary employer's premises.

B. At the time of the picketing, the primary employer was engaged in its normal business at the situs.

C. The picketing was limited to places reasonably close to the location of the situs, and

D. The picketing disclosed clearly that the dispute was with the primary employer.

See Sailors Union of the Pacific, 92 NLRB 547 (Moore Dry Dock) (1950).

The Moore Dry Dock case was soon followed by the Denver Building Trades case, decided by the Supreme Court in 1951, 341 U.S. 674 (1951). In that case, a general contractor with a unionized workforce engaged a subcontractor who employed nonunion electricians at the jobsite. The building trades council objected to the use of nonunion workmen on the site. When the subcontractor refused to leave the job, the council placed a picket line on the site. In response to this "signal," the

union members in the general contractor's workforce walked out. After two weeks of picketing, the general contractor terminated the sub's contract. The subcontractor thereupon filed an unfair labor practice charge with the National Labor Relations Board. The case was carefully considered by the U. S. Court of Appeals for the District of Columbia Circuit, which unanimously held, in an opinion written by Judge Fahay, that there was no violation.

When the case reached the Supreme Court, the Council argued that it had engaged in a primary dispute with the general contractor alone, and had simply tried to get him to make the project an all-union job. The Court rejected this contention and ruled that the existence of the subcontract presented a materially different situation. In the Court's view, the only way which the Council could have attained its objective was to get the general contractor to terminate the subcontract. This constituted a prohibited object under the Act, since the Council's purpose was that of "forcing or requiring...any employer... to cease doing business with any other person;..." 341 U.S. at 685-691.

Justice Douglas dissented in an opinion joined by Justice Reed:

> "The employment of union and nonunion men on the same job is a basic protest in trade union history. That was the protest here. The union was not out to destroy the contractor because of his antiunion attitude. The union was not pursuing the contractor to other jobs. All the union asked was that union men not be compelled to work alongside nonunion men on the same job. As Judge Rifkind stated in an analogous case, 'the union was not extending its activity to a front remote from the immediate dispute but to one intimately and indeed inestricably united to it.'
>
> "The picketing would undoubtedly have been legal if there had been no subcontractor involved -- if the general contrator had put nonunion men on the job. The presence of a subcontractor does not alter on whit the realities of the situation; the protest of the union is precisely the same. In each the union was trying to protect the job on which union men were employed. If that is forbidden, the Taft-Hartley Act makes the right to strike, guaranteed by §13,

> dependent on fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned. I would give scope to both § 8(b) (4) and §13 by reading the restrictions of §8(b) (4) to reach the case where an industrial dispute spreads from the job to another front." 341 U.S. at 692-693.

The unfairness of the Denver Building Trades decision soon became apparent as the Board and the courts clarified the application of the secondary boycott provisions to other industries. In the words of the Supreme Court, the Board more or less felt its way during the first fourteen years in which it had to apply Section 8(b)(4)(A), and modified and reformed its standards on the basis of accumulating experience. Electrical Workers v. Labor Board, 366 U.S. 667, 674 (1961). This case arose during the course of a strike at a General Electric plant. Management had established a separate entrance to the premises for all employees of subcontractors and had prohibited its employees from using that entrance. The striking G.E. employees picketed all entrances to the plant, including the entrance reserved for the independent contractors. The NLRB ruled that this constituted a secondary boycott, since the union's object was to force the independent contractors to cease doing business with the employer. The Supreme Court affirmed the Board's ruling, but added an important new requirement: "the work done by the men who use the separate gate must be related to the normal operations of the employer and must be of a kind that would not, if done when the plant were engaged in its regular operations, necessitate curtailing those operations." 366 U.S. at 681.

In other words, the concept of relatedness was at the core of the Court's distinction between primary and secondary activity. If the separate entrance had been used by independent workers for regular plant deliveries, for example, the barring of picketing at that location would have been a clear invasion of the traditional primary activity

of appealing to neutral employees whose tasks aid the employer's everyday operations. On the other hand, if the independent workers perform tasks unconnected with the normal operations of the struck employer, such as construction work on his buildings, then limitations on picketing are consistent with the balance of competing interest established by Congress in the Act. In the latter situation, the prohibition on picketing would serve to isolate the innocent neutral employer, while not infringing on the union's right to exert primary pressure.

The National Labor Relations Board has held that the legality of picketing at a common situs in the construction industry must be determined by the Moore Dry Dock standards, rather than by the guidelines laid down by the Supreme Court in the General Electric case, and that the work relationship case set forth in the G.E. decision is inapplicable to the construction industry. See, for example, Markwell & Hartz, Inc. v. NLRB 387 F.2d 79 (5th Cir., 1967) (Wisdom, C.J., dissenting).

Although some Members of Board, and some federal judges, have dissented from this position, it remains the law under the Act. Nevertheless, it would be far more consonant with the underlying intent of Congress to apply the relatedness test established in the General Electric case, rather than the strict terms of the Denver and the Dry Dock cases.

In the Denver case, the Court simply asked whether there was a legal contractual relationship between the employer and the subcontractor, not whether there was any degree of relatedness between them. Because the Board and the courts are not required to examine the degree of interrelatedness between the prime and subcontractors, the prohibitions against secondary boycotts are not limited to neutrals in the

construction industry, but sweep up allied and closely related companies as well.

The construction trades unions have consistently maintained that the construction of a building is an integrated enterprise in which the subcontractors are interrelated allies of the prime contractor, rather than independent neutrals. The work relatedness of the various trades which, as shown in the construction of a single building, is as great, if not greater, than in most other industries.

Yet, as stated by Judge Wisdom of the U. S. Court of Appeals for the Fifth Circuit, in his dissenting opinion in the Markwell and Hartz case:

> "The effect of the Board's decision is to apply more rigid standards to the construction industry than to the manufacturing industry. Any prime contractor would be able to frustrate the purposes of picketing by opening gates reserved for his subcontractors."

At an earlier stage in Markwell and Hartz, when it was before the NLRB, two highly experienced and able Members of the Board dissented from the majority decision. The criticism stated in the dissenting opinion of Member Fanning, which was joined by Member Jenkins, was voiced as follows:

> "It undoubtedly is too late in the day to argue that appeals to employees making deliveries to a primary employer in the construction industry are not legitimate primary activity. Certainly, it cannot be so argued on the faulty premise that Congress intended 'more lenient' treatment of picketing at industrial sites than it intended for picketing of sites in the building and construction industry. Indeed, if the special treatment accorded the building and construction industry in Section 8(e) and 8(b)(4)(A) is considered, it could be argued that Congress intended that more 'lenient treatment' be given to secondary activity in building and construction industry than in manufacturing industries generally."
>
> "Signigicantly, Congress has not seen fit to distinguish between industries, by adopting a more narrow definition of the lawful scope of picketing in the construction industry than is permitted in other industries. Certainly, the

economic pressure sustained by neutral subcontractors as a consequence of reserved gate picketing on a construction job is no different from that imposed by like conduct upon neutral subcontractors performing work on premises occupied by a struck manufacturer. Nor is it any different from the pressures sustained by neutral suppliers making deliveries to the struck primary employer whether he be a manufacturer or a general contractor in the building and construction industry. Accordingly, it is only by determining the legality of reserved gate picketing by standards generally applicable to all industries that the dual congressional objectives are served and the competing interests of picketing unions and secondary employers protected.

* * * *

"In view of the foregoing, we find, contrary to the majority opinion, that the principles set forth in the General Electric decision, and the tests there enunciated by Court for the application of those principles, govern picketing in the construction industry as well as in other industries.

"As we believe, for reasons stated below, that the Court in those decisions applied principles of general application, we dissent from the majority's conclusion that the tests announced in General Electric for determining whether appeals to employees of neutral contractors constitute legitimate primary activity are not applicable to the building and construction industry." 155 NLRB 334, et seq. at pp. 332, 330.

It is highly unfair to deny the construction and building trades unions the benefit of the work relatedness test while making this policy available to other industries. The proposed bill S. 1479 would eliminate this descriminatory treatment and enhance the uniformity of labor law in this area. We will now examine the provisions of S. 1479 to demonstrate how it will achieve this result.

PROVISIONS OF S. 1479

The bill under consideration would provide an exception to the secondary boycott prohibition of the Act for picketing at construction sites. The operative language of the bill is as follows:

"nothing contained in clause (B) of this paragraph (4) shall be construed to prohibit any strike or refusal to perform services or any inducement of any individual employed by any person to strike or refuse to perform services at the site of the construction alteration, painting, or repair of a building, structure, or other work and directed at any of several employers who are in the construction industry and are jointly engaged as joint venturers or in the relationship of contractors and subcontractors

> in such construction, alteration, painting, or repair at such site, and there is a labor dispute, not unlawful under this Act or in violation of an existing collective-bargaining contract, relating to the wages, hours, or other working conditions of employees employed at such site by any of such employers and the issues in the dispute do not involve a labor organization which is representing the employees of an employer at the site who is not engaged primarily in the construction industry."

From the foregoing language, it can be seen that the bill would apply only at construction sites. The employers affected by the bill are those who are jointly engaged as joint venturers at the construction project, or who have the relationship of contractors and subcontractors; employers who are not engaged primarily in the construction industry would not be affected. The bill thus reflects the test enunciated by the Supreme Court in the General Electric case by making the concept of work relatedness the key to the distinction between primary and secondary activity, rather than the legal concept of who controls an independent contractor.

Thus, bill S. 1479 would simply give the building and construction trades unions the picketing rights later accorded to unions in other industries.

Reforms similar to those contained in S. 1479 have long had bi-partisan support in both Houses of the Congress and from the White House. Legislation similar to S. 1479 has been recommended by Presidents Truman, Eisenhower, Kennedy and Johnson. Although many bills have been introduced, and the Committee Reports in both the House and Senate have been favorable, none has yet been voted on by the House or the Senate. One bill, H.R. 10027, was reported favorably by the House Education and Labor Committee during the 89th Congress in 1966, but was later withdrawn from the calendar, apparently because of

the issue of racial discrimination in construction. This objection is not applicable to S. 1479, however, because the bill expressly provides that it may not be construed to authorized picketing where the objective is the removal or exclusion of an employee from the site on the grounds of race, creed, color, or national origin.

The bill S.1479 would permit picketing only where the methods and objectives are otherwise lawful. The bill expressly provides that the labor dispute must not be unlawful and must not be in violation of any existing collective bargaining agreement. Thus the bill will not protect violent picketing, since that is prohibited by state and local laws in all parts of the United States, and will not become operative in the case of "wildcat" strikes in violation of a no-strike clause in an existing collective bargaining agreement.

Express provision is made in S. 1479 for construction projects which affect the national defense. When the site is located on a military facility or installation, prior written notice of intent to strike must be given ten days in advance to the Federal Mediation and Conciliation Service, to state or territorial mediators, to the employers on the site, to the military agency involved, and to the union's international or national affiliate.

There is a clear precedent for the provisions of the proposed bill in the Landrum-Griffin Act of 1959. That Act makes the secondary boycott prohibition inapplicable to "persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry." This amendment reflects the recognition by Congress that employers who are integral parts of a production process of enterprise should not be regarded as "neutral" parties within the meaning of the Act. The

proposed bill would apply the same kind of treatment to joint enterprises in the construction industry that has been afforded to the garment trade.

SUMMARY

In conclusion, it is submitted that the proposed legislation will protect the economic rights of construction labor, without harming the rights of neutral employers. The bill would remedy a defect in the National Labor Relations Act created by a Supreme Court decision which has long since been refined and even superseded by later interpretations. The bill would assure equal and non-discriminatory treatment for construction and non-construction unions alike. It would not lessen the current statutory protection of true neutral employees in any way, nor would it spread labor disputes beyond the immediate parties. The bill has safeguards to prevent the use of strikes for racial or religious discrimination, and takes cognizance of the requirement of national security. There is ample precedent for this bill, both in the Taft-Hartley Act itself and in the numerous decisions construing it. Finally, there is a long history of support for legislation previously introduced for this purpose.

The CHAIRMAN. Paul G. Bell is our next scheduled witness.

Mr. Bell, I do not know whether you have been advised we are under limitations here, on opportunity to continue this hearing. We cannot go on after quarter of 12 because of the floor situation.

Senator JAVITS. Mr. Chairman, I have a foreign relations problem right this minute. My staff will closely monitor what is said.

The CHAIRMAN. However, if you feel there is more to be said when we are forced to leave, we can have you back at our next session.

STATEMENT OF PAUL G. BELL, JR., MEMBER, BOARD OF DIRECTORS, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. BELL. Thank you, Mr. Chairman. I will proceed as rapidly as I can.

I am Paul G. Bell, Jr. I come up here from Houston, Tex., to appear before you and appreciate the opportunity.

My company is P. G. Bell Co. We are general building contractors in Houston. We build all sorts of buildings, both public and private owners.

We have had collective bargaining agreements since the formation of our company in late 1950's.

I am here representing the Associated General Contractors of America. This is a national business organization with 118 Local chapters. We have in excess of 8,000 general contractor members who account for about 60 percent of the annual contract construction volume in this country. We build buildings, highways, subways, dams, sewer and water projects, industrial plants, and other heavy projects.

With me are Richard Prayton, who is our assistant executive director, and Arthur Hensy, who is director of our Government relations service.

My purpose here is to respectfully oppose S. 1479 on behalf of AGC.

You have been furnished with a lengthy document outlining our position. My remarks would be brief and, in essence, a summary of our position from the viewpoint of a construction man, construction business man, who has to deal with the ultimate realities of legislation of this nature.

Our opposition is both in principle and for a practical standpoint. The first basic principle violated by this legislation is the legalization of secondary boycott. We believe this not to be in the public interest.

The second basic principle which this legislation attacks is the necessity for free competition in the construction industry. This legislation would seriously restrict that competition and result in higher cost to the consumer of the ultimate constructed project.

In practice, I would see an alarming increase in job site picketing, strikes, slowdowns, and delays. I see the necessity for our company to extend its normal business relationship with its subcontractors and suppliers to include involvement in their labor relations activities.

I would see an increase in the imbalance which exists between labor and management in bargaining in the construction industry.

I would expect that if this legislation becomes law, that we would see escalation in construction costs which would reduce our new business opportunities.

There are many complex legal issues which appear to be raised in connection with this proposal; not being an attorney I can only feel that I am competently advised that there is much more than meets the eye with respect to the impact of it and that in the event it becomes law, I certainly feel that our company annual legal budget will have to be substantially increased.

Finally, there is much current discussion of legislative changes affecting bargaining in the construction industry. It would appear to me that the issues being discussed here are only a part of that larger issue and that larger issue is receiving much attention, not only by our friends in the building trade departments and in our association, and other associations, but by the Secretary and his Department as well.

We have to wonder if this issue more properly belongs in those discussions.

Gentlemen, those are my remarks. I would be pleased to try to answer any questions which may be raised. If we cannot answer them properly here, we would be delighted to furnish you with some additional written information for your consideration at a later date.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Bell.

I appreciate your opportunity to be available for further contribution if we feel necessary.

Now, on page 1 of your statement, you contend the bill would encourage more picketing and striking and expand economic power of the building trade unions in general, in spite of the fact that union locals have not demonstrated adequate responsibility in the exercise of power which they have presently.

Were you here for Secretary Dunlop's testimony?

Mr. BELL. Yes, I was.

The CHAIRMAN. I would judge with respect to that point 4, that you must have been encouraged by the totality of his testimony. Not just with the bill and the certain additional factors he suggested be included, but in the generalized approach to a better organized bargaining situation in construction labor.

Mr. BELL. Of course, I am always impressed by the Secretary's testimony.

We have known him for many years and I think of him, as he puts it, in good humor.

We have often crossed swords with him on many issues.

At the local level we have some concern about some of his views with respect to trying to bring local disputes to this level to have them resolved. We are really not clear how that would work and we have some serious reservations about it.

The CHAIRMAN. Now, you do emphasize the fact that the union locals have not demonstrated adequate responsibility.

One of the suggestions was no action could be taken, if this bill were law, until there were national union agreement to action under the law, if this were law.

Mr. BELL. Yes, I understand that.

The CHAIRMAN. That takes it above that local situation significantly.

Mr. BELL. I understand that proposal, Mr. Chairman. But the practicality of the situation is that in our view, this legislation would exacerbate picketing immensely.

Let me just give you a brief example. People in our part of the world and other parts of the world, too, and we have worked in other States, in the pursuit of our business——

The CHAIRMAN. You speak for the generals nationally, do you not?

Mr. BELL. Yes, sir. But employees will picket at the drop of a hat and whether it is an illegal picket or not, really makes little difference.

We had a situation——

The CHAIRMAN. They are doing that now?

Mr. BELL. Oh, yes. We had a situation not long ago at an industrial plant where a man came to work one morning with a piece of cardboard on the end of a stick and it said, "Paul Bell is unfair to me." He walked up and down in front of the job—nobody would go to work.

Now, that was clearly an illegal picket. It took us all day to get that unraveled and get the job put back together.

So what I am suggesting is if we open up a whole new box of picketing opportunities, that may become commonplace.

The CHAIRMAN. Now, as I view it—you heard the discussion that Senator Javits had in this connection, did you not, when he talked about the worker that got up on the wrong side, goes in and says, "Here we go; we won't work today, we will picket"? This is exactly the whimsical and irresponsible kind of action that the Secretary suggests the additional provision would protect against.

Mr. BELL. Well, I understand the Secretary's suggestion.

The CHAIRMAN. Well, as it is now, a disgruntled man, indiv dual, can picket Pau Bell; under this proposal there would not be—this would be censored by his peers.

Mr. BELL. Well, sir, I guess my view is that if anything, this might create more disgruntled people and create more opportunities for picketing.

The CHAIRMAN. You have not spelled that out. But, again, we have got to watch the clock.

Senator Taft.

Senator TAFT. Thank you very much.

Mr. Bell, would you comment briefly on the Secretary's comments. I just went over with Mr. Georgine, the conditions? Do you think that if we provide these conditions, that some of the problems you see would be ameliorated somewhat?

Mr. BELL. Well——

Senator TAFT. Ten-day notice, international approval, 30-day limit if they went in?

Mr. BELL. I would have to say first on the 30-day issue, I would have to agree with Mr. Georgine, but for different reasons.

In our experience if we had a 30-day period terminate, we would just then have a new picket for another 30 days.

So I do not think the 30-day situation resolves anything.

As far as notifying the international——

Senator TAFT. And having approval of the international?

Mr. BELL. Well, here, again, I cannot see that the approval of the international is really going to stop so-called wildcat picketing.

If it is going to be done, it is going to be done.

Senator TAFT. That will make it more clearly illegal, will it not?

Mr. BELL. Well, again take the fellow, the one fellow who thought I was unfair to him for some reason, I really had no remedy against him. Our view is that there really—there are no alterations or additions which could be made for the bill which would make it pallatable to us.

The CHAIRMAN. None?

Mr. BELL. None.

Senator TAFT. Apparently.

I think that was my next question.

[Laughter]

The CHAIRMAN. We will give Senator Hathaway an opportunity to lead you to a different conclusion.

[Laughter.]

Senator HATHAWAY. Did you say there are no possible provisions that would make this pallatable to you?

It does not seem worthwhile asking you any more questions.

Mr. BELL. Well, certainly I have heard none suggested today that would make it pallatable and I am not in the bill-writing business.

Senator HATHAWAY. Well, we would appreciate it if you would try to get in the bill-writing business and give us some suggestions that would make it more pallatable to you.

It seems to me Secretary Dunlop's suggestions should help considerably. I do not think you have answered that question. With the 10-day notice for picketing and the approval of the international union, it seems to me you would have less frivolous wildcat picketing than you have at the present time.

Mr. BELL. Perhaps I can answer it in this way, that if the bill became law, it would, with those provisions, although you heard me state my thoughts on 30-day issues, I think it would just be window dressing. It would be less unattractive to us, but it would still be unattractive as a piece of legislation and we would be opposed to it.

Senator HATHAWAY. I see.

Thank you.

The CHAIRMAN. Thirty seconds.

Have all of these proposals been digested by your organization in conference committee or caucus? How do you come to these decisions.

Mr. BELL. Well, they have been reviewed by our staff counsel and so forth, and then we met, of course, yesterday afternoon and polished up our position we are presenting here this morning.

The CHAIRMAN. What is the extent of your membership?

How many contractors are members of the organization?

Mr. BELL. Something in excess of 8,000 general contractors and then, of course, we have some 20,000 associate members being subcontractors, suppliers, and others.

The CHAIRMAN. Well, quite obviously these proposals have not gone to the entire membership.

Mr. BELL. No.

The CHAIRMAN. Our time—yes, we are mandated to recess now.

I would like to suggest to the witnesses that we did not reach today that we schedule an extraordinary session tomorrow—extraordinary in that it was not scheduled for tomorrow—tomorrow morning at 9 o'clock, if Mr. Abrams, Mr. King and Mr. Markowitz are agreeable. Are they present?

Is that agreeable? Nine o'clock?

I will say you will have to check with our counsel to determine where it will be.

It will be 9 o'clock. There is another meeting here, so it will be in another room probably.

Thank you very much.

Mr. BELL. Thank you.

[The prepared statement of Mr. Bell on behalf of the Associated General Contractors of America follows:]

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
1957 E STREET, N. W. • WASHINGTON, D. C. 20006 • 202/393-2040

STATEMENT OF

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

BEFORE THE LABOR SUBCOMMITTEE

OF THE SENATE COMMITTEE ON LABOR & PUBLIC WELFARE

ON S. 1479

JULY 10, 1975

SKILL—RESPONSIBILITY—INTEGRITY

Mr. Chairman, my name is Paul Bell, Jr., President of the P. G. Bell Company from Houston, Texas. My appearance today is on behalf of the Associated General Contractors.

The Associated General Contractors of America is a national business association representing more than 8,000 general construction firms. These firms perform about 60 percent of the annual contract construction volume of the United States. Our membership represents the full range of the construction industry, including the construction of highways, buildings, municipal-utilities projects and heavy and industrial facilities.

The AGC is opposed to S.1479 (and to similar proposals) for the following reasons:

1. The bill would legalize secondary boycotts in construction and secondary boycotts are not in the public interest.

2. The bill would further restrict competition in the business market and competition is the most dynamic force working towards the solution of problems in the free interprise system in general, and the construction industry in particular.

3. The bill would expand restrictive secondary actions by unions and is inconsistent with national antitrust policy as interpreted by the Supreme Court in the Connell Construction Company Case.

4. The bill would encourage more picketing and striking and expand economic power of the building trades unions in general, in spite of the fact that union locals have not demonstrated adequate responsibility in the exercise of power which they have presently.

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5. The bill would result in more unemployment, higher costs and less efficiency and thereby thwart the hope of the nation that construction can reverse the current economic slump, and reduce the industry's ability to efficiently provide construction services necessary to meet the nation's critical energy and clean water needs in the coming decade.

Based on firsthand observations of the construction industry, going back to World War I, we believe these to be hard, cold, factual observations.

1. Secondary Boycotts

The bill grants immunity to the building trades unions, under certain conditions, from Section 8(b)(4)(B) of the Taft-Hartley Act. This section presently prohibits union pressure to force a cessation of business relations. This prohibition against secondary boycotts prevents local unions from striking and picketing an employer who is not involved in a dispute with the union to cease doing business with another employer with whom there is a dispute. The uninvolved employer is regarded as secondary in the dispute and, actually, he and his employees should be spared from involvement in a dispute which is not his own. This bill destroys those rights.

The prohibition against secondary boycotts in 8(b)(4)(B) is one of the key provisions of the Taft-Hartley Act, having been included in lieu of an earlier proposal to extend antitrust laws to unions. Since secondary boycotts have always been a natural tool for construction unions, 8(b)(4)(B) is of prime importance to the continued healthy economic life of the construction industry. The bulk of the arbitrary and damaging conduct of construction unions in this industry can be, and actually is, remedied by invoking this section. Granting immunity to the construction

unions from 8(b)(4)(B) is in effect the removal of the heart of the Taft-Hartley Act.

When Section 8(b)(4)(B) was debated in the Taft-Hartley Act, a question about "good" secondary boycotts came up. The Senate leader in the passage of that Act observed that, "there are no good secondary boycotts". Over the years, that observation has proved to be a wise and correct one. To resort to secondary boycotts is a refusal to work within the system to resolve labor disputes in a rational and fair manner.

We have studied the building trades unions' arguments for legalizing secondary boycotts, and we do not believe they are valid. They revert back to the 1951 Supreme Court case involving the Denver Building Trades. That was a simple, factual situation in which a union general contractor engaged a nonunion electrical subcontractor and, when the union picketed the general contractor, they were held in violation of the secondary boycott provision. The remedy under the law, of course, would have been a simple appeal to the employees of the electrical firm to join the union and negotiate an agreement. Instead, they sought to force the firm from the project, and the law forbade that action. Since that time, the elimination of prohibitions against secondary boycotts has become a principal objective of the building trades unions. Any change in 8(b)(4)(B) today would have very deep and serious repercussions, to the great detriment of the public. AGC therefore highly recommends against any such changes.

2. Restrictions on Competition

President Ford, in a nationwide TV broadcast, recently advised the American people, in reference to America's role in foreign trade,

that "Competition is good. Competition is what has made this nation great." Similarly, Alan Greenspan, Chairman of the President's Council of Economic Advisors, advised AGC in 1969 that "The only solution to the problem of escalation of wages in construction is to open up the forces of competition." The passage of S. 1479 would, in our opinion, be contrary to those conclusions.

The bill would authorize and lead to restrictions of competition in the business market outside the context of normal collective bargaining relationships as required by the Supreme Court in the Connell Construction Company Case.

Restrictions of competition would result from granting immunity to the building trades unions from 8(b)(4)(B), and thereby permitting a single building trades union to dictate to general contractors as to the labor relations policies of subcontractors they would be permitted to use. The net result would be that this union could control which subcontractors could enter a given market by simply making or refraining from making labor agreements with them. This would force many subcontractors not operating with labor agreements out of the construction market even though they may, in fact, be paying as much or more than the union negotiated or prevailing wage rates and working conditions in the area. Such restrictions on subcontractors may well be in violation of the Federal antitrust laws under the Connell Case. We believe any legislation affecting Section 8(b)(4)(B) should be considered in the light of supporting the Supreme Court's interpretation of the antitrust laws in the public interest.

The issue of wages and conditions in a collective bargaining relationship is not the subject of this bill. However, its indirect effect on them cannot be over-emphasized as is detailed later in this statement.

What is directly in question is the wisdom of circumventing proper and normal collective bargaining relationships, and encouraging union pressure on secondary employers to force them to cease doing business with the employers who are subject to such bargaining relationships. The kind of competition AGC desires to preserve and to expand is competition in the business market. Inherent is the general contractor's right to select the most efficient subcontractor services and the most efficient products for use in fulfilling the construction contract. Secondary Boycotts will make it impossible for economic selections of services and products to be made, and this restriction will become extremely costly to the American public, and the working man in particular, without redeeming features.

3. The Connell Case

The Supreme Court decision in the Connell Construction Company Case is one of the truly significant decisions in the last ten years, because many relationships may well be readjusted to their proper positions as a result of that ruling.

The facts are that a plumbers' union, with whom the general contractor had no collective bargaining relationship, picketed the general contractor to force him to sign an agreement to use only union plumbing subcontractors. The general contractor brought charges of an antitrust violation, which were dismissed by the District and Circuit Courts on grounds that the construction exemption in Section 8(e) of the Taft-Hartley Act indicated an antitrust exemption for the construction unions.

The Supreme Court, in overruling the lower courts, concluded that there were no exemptions for union restrictions of the business market not within the context of collective bargaining relationships and not limited to a single construction site.

The Supreme Court observed that there was no collective bargaining relationship and that the union's demands would restrict the general contractor's choice of subcontractors, in the business market, not within the context of collective bargaining. This is a significant precedent, indicating that under these or similar circumstances, unions are subject to the Federal antitrust laws.

The Connell Case expounds the desirability of protecting secondary employers from becoming involved in labor disputes not their own, which is precisely opposite to the philosophy inherent in S. 1479.

The passage of S. 1479 may falsely suggest to construction workers and their unions that they are free to practice secondary boycotts without restraints, only to find that they have been misguided, and that their secondary boycott activities are, in fact, Federal antitrust law violations. We refer to this possibility simply to demonstrate the desirability of supporting long-established national policies upholding competition, rather than legislating in this field without a complete examination and understanding of the entire matter.

4. Building Trades Unions' Power Expanded

There can be no question that S. 1479 would greatly expand picketing, striking and economic power generally of the building trades unions. The power to picket and strike secondary employers to force cessations of business relations is, indeed, too clear a power to require an explanation. The building trades unions would be free to picket the entire construction project in any dispute and force as many of the members of other unions to walk out as possible. The AGC has considered the impact of this bill on projects of the magnitude of the highly important

Alaska Pipeline. We feel that this bill could enable the building trades unions to picket and cause a total-site work stoppage because of a dispute between one of the many unions and one of the many hundreds of employers on such a project.

We have likewise considered the references in the bill to coverage of painting and repairs. On that basis, we can visualize a dispute arising between a painting union, for example, and a painting contractor doing repair on a giant factory, with the result of a total-plant-site picket line and work stoppage involving all of the industry workers in that plant. Many thousands of industrial workers could thereby be idled by such strikes each year, even though they themselves have no dispute with their management.

It has been AGC's observation, having seen many of our members victimized by irresponsible conduct by the local building trades unions, that the record is an inadequate basis to presume they can responsibly handle the power granted to them in this bill.

The record on the building trades unions' conduct is in every newspaper and magazine. A current example appears in a May 29 report in the Engineering News-Record that "Current developments in construction contract bargaining are causing concern verging on alarm among government inflation watchers." It is common knowledge that this concern is felt throughout the country. A glaring example is the reported case of plumbers in Portland, Oregon, that made a strike settlement for $2.30 an hour increase effective in 1975, plus 50¢ an hour and a cost of living increase in 1976, all added to the previous wage of $11.06 an hour. This settlement leapfrogged a 1974 settlement of plumbers in Pasco, Washington of $2.50 an hour over two years. Wage rates in construction,

to which all trades will aspire and reach if this bill passes, are now as high as $14 and $15 an hour in many areas. In fact, the electricians in Alaska will receive $19.95 an hour in the last escalation stage of their current agreement. The Labor Department's quarterly report of 7 key building trades in 100 cities reported that in the first quarter of 1975, the average wage reached $10 an hour. These are significant economic quantities, when it is realized that building tradesmen receive twice that amount for overtime over 8 hours a day, 40 hours a week or on weekends.

The inflationary trend in construction continues unabated, with the Associated General Contractors negotiations survey now indicating that the rate of increase so far in 1975 is running at 10% a year. Such conduct on the part of the building trades unions is unexplainable when it is realized that unemployment in this industry is now averaging 21% with some areas reporting 50%. Such conduct under these circumstances suggests a lack of public responsibility, and that the answer suggested by the advocates of this bill, to give the local building trades more power, simply does not make sense.

In the face of this extraordinary demonstration of economic power, the building trades unions are claiming that the Taft-Hartley Act must be modified by a recission of the ban on secondary boycotts, in order to restore equal treatment of the building trades with industrial unions. The charge of inequality is without substance. Construction unions consistently run ahead of industrial unions in wage settlements. As reported by the U. S. Labor Department in the May, 1975 Monthly Labor Review, page 118, the annual percent of wage increase per year, over the life of the labor agreement for manufacturing vs. construction is as follows:

Type	1969	1970	1971	1972	1973	1974
Manufacturing	6.0	6.0	7.3	5.6	4.9	6.1
Construction	13.1	14.9	10.8	6.0	5.1	9.6

The building trades unions already have extensive, special privileges not enjoyed by other unions. They include the right to have pre-hire agreements, exclusive hiring hall agreements and exemption from the ban on "hot cargo" agreements.

In addition to those special privileges, the building trades have rights to picket to obtain and enforce restrictive subcontractor agreements. Enforcement by picketing and striking is permitted where the signatory contractor's own wages and conditions are at stake which makes him a primary party to the dispute. In other words, construction unions have wide-open authority to obtain and enforce subcontractor clauses within the context of their legitimate collective bargaining interests.

The construction unions also have wide-open authority to conduct picketing and striking against any employer in a dispute on a construction site subject only to the rules of fair picketing to protect the Taft-Hartley rights of employees and others that are engaged in work on the same site, but not engaged in the particular dispute. These may be characterized as the rules of fair picketing and are designed to provide an equitable balance between the rights of a union to air its dispute by picketing, and the rights of the parties not involved in the dispute not to be involved intentionally in the picketing and work stoppages.

These rules are well known and simply require the union in the dispute to indicate clearly on the construction site against whom the picketing is directed, to picket as closely as possible to where the

employer in the dispute is working, to picket only after the employer in the dispute is engaged in normal business at the site and to picket only when the location of the dispute itself is at the site. Special clarification had to be made for the application of these rules to the very complex relationships on multi-employer sites involving many separate general contractors and their respective subcontractors. This clarification authorizes the use of reserved gates for the employers on the site who are involved in the dispute and reserved gates for employers on the site who are not involved in the dispute. The disputing union then has no difficulty in applying its full picketing power against the employers with whom they have a dispute without running into any legal difficulties.

The special privileges and the extensive rights to picket, noted above, are a sufficient rebuttal to the alleged need for S. 1479.

We, of course, comprehend but do not agree with the arguments that industrial unions can picket entire factory site in a dispute with management, while construction unions cannot picket and strike the entire construction site. The differences lie in the distinctions between industrial operations and construction operations. The main difference, of course, is the fact that a single employer is involved in the industrial plant as contrasted to a number of independent employers with their own respective labor relations responsibilities on a construction site. The underlying law prohibiting union pressure to force a cessation of business relations applies equally to the industrial and construction unions. The unanswered question then is whether the building trades unions can and would cooperate with an industrial type approach to

construction, in keeping with their desire for equal treatment with industrial unions? Can they and would they accept an industrial type labor relations program for construction sites under which the industrial type picketing of the entire project would be proper and equitable?

The fallacy of the building trades argument is exposed by a quick examination of the court decisions they cite for their argument, the General Electric and Carrier Corporation Cases.

In General Electric, the striking industrial union was permitted to picket the separate gate of the construction contractor. The reason for this result, however, is equally applicable to construction projects, because the specific work being performed by the construction workers at the General Electric plant was involved in the industrial unions dispute. In other words, picketing was permitted against the construction contractor because he was performing work related to the normal operation of the plant involved in the dispute. Construction contractors are subject to exactly the same treatment. In the Carrier Case, the striking industrial union was permitted to picket the railroad spur and this, again, is a treatment that is available to construction unions. They are permitted to picket all gates through which supplies are moving to the contractor involved in the dispute.

As contrasted to those cases which favor the industrial union, some industrial plant cases would favor the construction unions. One of these involves the Tennessee Coal and Iron Company in which the striking industrial union extended its picketing to a construction job on the plant premises. The purpose was to eliminate the contractor and the building trades unions from the plant premises on the grounds that the industrial union wanted the plant management to perform the work directly with

industrial craftsmen. The building trades invoked the very provisions of the Taft-Hartley Act, which they want to rescind in this bill, for their own protection and halted the picketing directed against them. The building trades, however, seek to perpetuate this special disadvantage to the industrial unions by exempting nonconstruction unions from the special privileges granted by the proposed bill.

In either instance, a fair reading of these and other cases clearly indicates that there is no legal inequality of treatment calling for correction by legislation.

In view of the discrepancy between the alleged purpose of S. 1479 and the facts, we conclude that no further action would be justified in the public interest.

5. Less Labor Peace and More Discord

On the basis of experiences over many years, both before and after the Taft-Hartley Act was passed, AGC is convinced that S. 1479 would cause less labor peace and more discord then has existed in the construction industry for many years. We are convinced that this bill would generate a dramatic increase in strikes, and the strike record under existing law is already a bad one. Each of the strikes, in this increased total number of strikes, which would be generated by means of the unions' new found secondary boycott power, would be much bigger strikes involving many more employees than ever before. Entire factories, mines, shale operations, energy installations and clean water operations would be shut down totally by reason of a local construction union's exercise of the secondary boycott powers in each isolated dispute.

Continuous pressure for higher wages and more restrictive working conditions will result in inflationary wage increases and a reduction in efficiencies of operations on the site. An expansion of this pressure

can be anticipated from the increased secondary boycott power. The result will be a sharp decline in the competitive position of U. S. industry,with perhaps a negative impact on the nation's ability to compete in world markets.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 11:45 a.m., the hearing in the above-entitled matter was recessed, to reconvene at 9 a.m., Friday, July 11, 1975.]

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS, 1975

FRIDAY, JULY 11, 1975

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

The subcommittee convened, pursuant to recess of the previous day, at 9:12 a.m., in room 6226, Dirksen Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Randolph, Taft, and Stafford.

Staff present: Donald Elisburg, counsel; Don Zimmerman, minority counsel; Howard Moore, professional staff member; David Dunn, minority professional staff member.

The CHAIRMAN. We set this meeting for 9 o'clock.

It was with the expectation that we would only run until 10 o'clock.

Now we can run until noon, so you gentlemen have a lot more time than you wanted.

The Senate does not go in session until noon today, Bob, so our 9 o'clock plans were an early start, at any rate.

Senator TAFT. I'm happy to be here.

However, I have three other meetings I have to go to.

The CHAIRMAN. Today we will conduct the second day of 3 days of hearings on S. 1479.

This bill, which I introduced, would provide reform in the construction industry authorizing union picketing.

The bill is intended to remove an unintended application of the law governing primary union activity which has existed since the *Denver Building Trades* case was decided by the Supreme Court in 1951.

Yesterday our subcommittee received highly instructive testimony from Secretary of Labor Dunlop, from Mr. Robert Georgine, president of the Building and Construction Trades Department, AFL–CIO, and from Mr. Paul Bell, member of the board of directors, Associated General Contractors of America.

Secretary Dunlop gave testimony in which the effect of this bill on the public interest was emphasized.

Mr. Georgine provided thorough discussion of the point of view of organized labor on this reform measure and Mr. Bell's testimony presented the views of construction general contractors on behalf of their national association.

Now, today we will hear from Mr. Philip Abrams, president, Associated Builders and Contractors, Inc.; Mr. Paul King, National Association of Minority Contractors; and Michael Markowitz,

director, Labor-Management Relations, National Association of Manufacturers.

Do you have any statement to make this morning, Senator Taft?

Senator TAFT. I have no statement, Mr. Chairman.

The CHAIRMAN. All right.

We will get right to the testimony.

We will now hear from Mr. Abrams.

STATEMENT OF PHILIP ABRAMS, PRESIDENT, ASSOCIATED BUILDERS AND CONTRACTORS, INC., ACCOMPANIED BY JOHN TRIMMER, EXECUTIVE VICE PRESIDENT; AND WILLIAM BARTON, GENERAL COUNSEL

Mr. ABRAMS. I am Philip Abrams.

I am the president of the Associated Builders and Contractors, Inc., in Boston, Mass.

With me is John Trimmer, our executive vice president, and Mr. William Barton, our general counsel.

We would ask at this time that our formal statement be entered into the record, and we will summarize it.

The CHAIRMAN. Very well.

Your full statement will be entered in the record at the conclusion of your testimony, and you may summarize as you see fit.

The CHAIRMAN. You may proceed.

Mr. ABRAMS. Thank you.

The Associated Builders and Contractors Association consists of 9,300 members throughout the country.

It consists of subcontractors, general contractors, suppliers, and associate members who believe in the merit shop philosophy; the merit shop philosophy believes that there is a place in industry for union and nonunion construction companies and union and nonunion workers and that it is in the best interest of the country that we work on the same jobsites, to build the same projects.

Merit shop contractors now build over 50 percent of the construction in the United States, and they have made great gains in the last 3 years through the utilization of highest productivity in the construction industry.

We oppose Senate bill 1479 because we believe it will cause chaos in the construction industry as well as polarize the industry into jobsites that are strictly union and jobsites that are strictly nonunion.

There is some surprise in the industry that we oppose the legislation because it will boost the amount of work done by nonunion contractors.

What this legislation has done is to accomplish what others have merely attempted to do—it has united all the construction associations in the industry without exception in unanimous opposition to it.

For the first time, every construction trade association is unanimously agreed on one subject, and that is that Senate bill 1479 is not in the best interests of the industry or our country, including all the union associations who see in it a further weakening of their position at the collective bargaining table and in the marketplace.

The first point we would like emphasized in our summary is the use of the joint venture fiction in the legislation.

We learned from IRS and from other legal history that a joint venture is a venture entered into voluntarily where people share the profits and losses.

General contractors and subcontractors on a construction jobsite do not share in each other's profits and losses. They are not joint venturers. They are individual entrepreneurs. They are different in function and in expertise, and have been throughout the history of the construction industry.

Several States recognize this by issuing separate prime contracts to different contractors on the jobsite.

Further proof of the fact that they have separate entities is recognized by organized labor who negotiates separately with each of the different concerns and does not involve the neutral third parties to those negotiations in their deliberations.

Secondary boycotts have been contrary to the national labor policy of the United States since 1947.

There is nothing in the legislation that would justify changing the ban on secondary boycotts.

There is no justification in the construction industry for perpetuating a new theory that all the contractors on a job site are joint venturers.

The Engineering News Record which is the leading publication in our industry had an editorial last week which asked what is the real intent of this bill, and we are really trying to discover that, as well.

The building trades, according to Mr. Georgine's testimony yesterday, claim that this legislation will provide equal treatment for the building trades.

Well, we cannot buy that. There is presently equal treatment for the building trades.

In many cases, as we will state in a few minutes, there is more than equal treatment.

There is no conflict then between the *GE* case and the *Denver* case.

In the *GE* case, GE was found to be replacing striking employees with contractors. The Supreme Court said that in the *GE* case all gates could be picketed because the men who were coming through all the gates were replacing the striking employees.

If a general contractor who is being struck replaced his employees with a subcontractor, then he could be picketed at the gates.

There is no conflict between the *Denver* case and the *GE* case. They are consistent.

They reflect a labor policy which has been the labor policy in this country since 1947 and which, again, is against secondary boycotts.

They do not improve the situation where someone replaces striking employees with another contractor.

The building trades claim they want to peacefully picket to inform the public. They have that right now.

They want to peacefully picket to inform the public specifically that the nonunion contractors are paying substandard wages.

They have that right now.

If the intentions of the building trades are only to picket to expose nonunion contractors paying substandard wages, then this legislation should exclude all union jobs.

It should exclude all jobsites where only union contractors are working on it.

It should exclude all secondary picketing against union subcontractors on merit shop jobs and it should exclude all jobsites where nonunion contractors are paying union wages.

If the object is to organize the open shop, the nonunion contractors, that is a legitimate aim under our labor laws, and so be it. But unions now have the right to organize nonunion contractors.

The fact is that they do not call for organizational elections because they do not want to organize nonunion contractors.

They also do not want nonunion men in the unions. Many of these men have been excluded from the unions, or they would not be working nonunion in the first place.

Well, what they want to do is to get all of the nonunion workers in the construction industry out of the industry and replace them with the men they have available to work on construction right now.

That is why most confrontations on construction jobsites are not organizational confrontations.

They are either under the guise of informational picketing or more likely jurisdictional disputes, under section 10 (k) of the National Labor Relations Act, which says that if you try to replace a nonunion man with a union man it becomes a jurisdictional dispute.

They do not want to organize merit shop contractors.

The real purpose of the legislation is more special privileges for the building trades and unions. It is more power over union contractors.

The legislative history of our country's labor laws especially with regard to construction is a history of the congressional intent to aid building tradesmen. However, by giving them so much power and so much control over collective bargaining over union contractors, it has resulted in low productivity in the construction industry and the highest wages of any industry in the country.

The average skilled wage for construction workers is $10.36 per hour.

In San Francisco, the plumbers get $16.32 per hour.

The low productivity and the highest wages of any industry in the country have resulted in a loss of union jobs; a loss of construction jobs being built by union contractors, and a concomitant loss of work by union journeymen and union tradesmen, and that is one reason why we have a 21-percent unemployment rate in the construction industry.

Some of the special privilege legislation that has been passed to aid the building trades unions, with the good intentions of trying to unionize the construction industry, have produced the opposite effect. For example, section 8(e) of the National Labor Relations Act, the so-called "hot cargo" provision.

What this does is allow product boycotts in the construction industry. It allows preservation of work strikes where a union can force in its collective bargaining an agreement, that any work that was previously done by men on the job site must continue to be done by men on the job site. This means that a union contractor—not an open shop contractor, but a union contractor—cannot use prehung doors or prefabricated pipe under the preservation of work agreements. Standard agreements which are the subject of a recent decision of the Supreme Court mean a less competitive position for union contractors and less jobs for union contractors means less jobs for union building tradesmen.

Another example of special privilege legislation is section 8(f) of the National Labor Relations Act, which includes the 7-day clause and the prehire agreement.

What this does is give the building trades union complete control over the work force so that the union building contractor finds his hands tied in trying to secure the most productive work force he can get and having his hands tied he becomes less competitive and loses work and union building tradesmen lose work.

The 8-hour overtime law on Federal construction work in the construction industry, if a man works more than 8 hours in a day he must receive overtime pay.

The Federal law for all other industry is that he receive overtime after 40 hours.

The net result of this is seasonality in the construction industry, which is one of the problems that the union sector of the industry faces.

If you have seasonality because you cannot make up time in the winter—if it snows or is cold or for some reason or another you cannot work, you lose 2 or 3 days, and you cannot go back and make it up with 10 hours a day or work Saturday so you can make up the days you lose during the week because of bad weather, and the union contractors have to shut the jobs down in November and do not start up again until March, and you have many men unemployed during a great many months of the year.

It is built-in because of the laws that give the unions special privileges.

Finally, without dwelling on the Davis-Bacon Act, it disrupts the collective bargaining process.

When the building trade unions go into a negotiating session with union contractors, they know, no matter what wage they settle on, it is going to be institutionalized by the Federal Government on 30 percent of the work that is done by the construction industry in this country.

It gives them tremendous leverage at the bargaining table and leads to a certain amount of wage irresponsibility.

The sum total of all of these special privileges which have been given to the building trades has not increased the amount of union construction in this country.

The fact of the matter is that the special privilege legislation is killing the building trades with kindness, and it is taking work away from union building tradesmen.

What are some of the consequences of Senate bill 1479?

In terms of the joint venture theory, if Congress passes this legislation, it redefines what a joint venture is. You will have problems resulting in all sectors of industry.

If you take the example of General Motors, there is as much interrelationship between Goodyear Tire Co. and General Motors and all the other producers and subcontractors as there is a tie between general contractors and subcontractors on the construction job site.

The fact of the matter is that this legislation is going to result in a tremendous amount of construction job shutdowns with a concomitant increase in violence throughout the country.

If any contractor or subcontractor is late with his fringe benefit payments to the union, the entire job site will be shut down.

If any contractor tries to bring a prefabricated product like a prefabricated boiler on the job site, the job site will be shut down.

If anybody buys a product that does not have a union label on it and brings it on the job site, the job site will be shut down.

If there is a jurisdictional dispute, legal or illegal, at the job site, the job site will be shut down.

The Alaska pipeline could be shut down from Valdez to the North Slope because contractors up there are buying gravel from Canada. It is coming into Alaska with Canadian drivers and there is nothing in the no-strike agreements on the Alaska pipeline that covers a situation like that. That means that the teamsters or any other union involved in the hauling of gravel for the Alaska pipeline could shut the entire pipeline down with a secondary boycott as allowed under this legislation, because Canadian drivers are bringing the gravel in.

Ecology, housing projects, involving the whole gamut of the construction industry is subject to shutdown because of any of the instances that I mentioned.

Another circumstance, another consequence, of the legislation will be its effect on independent unions. They are all vocal in opposing this legislation.

The Christian Labor Association, the Congress of Independent Unions, have all made public statements opposing this legislation.

The fact is, the legislation as it stands in the Senate (and I understand this has been changed in the House committee at this point) will encourage contractors who have agreements with independent unions to abrogate those collective bargaining agreements. Our question is: "Is only AFL–CIO unionism sacrosanct in this country?"

Do not the independent unions also have a right to maintain their collective bargaining status and to represent their members?

There is another statement in the legislation which says, "Labor practices not previously adjudged unfair would now be found to be permissible."

The way that the legislation is stated (and this also has been corrected in the House committee, I understand, yesterday), it would preclude any future administrative or judicial review of labor practices that have not previously been adjudged unfair.

For instance, it has never been adjudged unfair to seal off an entire military base because the situation has never come up as secondary boycotts would not allow it.

The way the legislation is stated, because it has never been adjudicated unfair, then it can no longer be considered and adjudged unfair.

That is what the language says.

Finally, on the 10-day notice on defense and space installations we see this as a basic carryover from the 1969 legislation which has not taken into consideration some of the changes in priorities in this country such as the environment and other problems that face this country, like housing.

Is space more important than the environment?

Is space more important than energy?

Is space more important than housing?

It does not seem to be in the ranking of priorities our national leaders and the Congress have set for us.

I would like to discuss briefly, since it was a subject of interest to the committee, Secretary Dunlop's suggestion.

Senator TAFT. Mr. Chairman, I wonder if I might interrupt?

I have to go to another committee and I am the only member on my side.

I would like to reserve the right to submit questions to the witness, in writing.

My staff member will be here and review Secretary Dunlop's suggestions and your comments on them, Mr. Abrams.

I will submit them to you.

The CHAIRMAN. Without objection.

Mr. ABRAMS. We would suggest and request the Secretary of the Interior and Secretary of Commerce be given a chance and be requested to give testimony before this committee, in addition to Secretary Dunlop.

I think it is noteworthy that Secretary Dunlop opened with the statement that it is not clear whether this legislation will enhance or reduce the union segment of the construction industry.

Secretary Dunlop, in making that statement, is endorsing the premise that we bring to you, that this legislation will do more to harm the union sector of the construction industry than to help it.

Secretary Dunlop first endorsed ex-Secretary Schultz' positions which are:

(1) That no present unlawful activity should be transformed into lawful activity (which is not what your legislation says, but it is something everybody can agree with).

(2) Mr. Schultz said that contractors should be excluded who operate under State laws, and there are 10 State laws that require prime contracts be awarded to subcontractors.

This is needed in the legislation or you are going to subvert the bidding process in 10 States.

(3) Schultz and Dunlop endorsed the theory that not only should industrial unions not be exposed to secondary boycott strikes, but independent unions should also be protected.

We endorse that.

(4) The subject of the enforceability of the no-strike clauses by injunction was discussed and we concur with the Secretary's opinion that under the *Boys Market* decision, it is not needed in this legislation since the Supreme Court has made a firm ruling on that.

(5) The next item they both endorsed was the encouragement of private settlement of disputes by the notice to employers and unions at the site. That is needed.

(6) Finally, they both endorsed limiting the duration of secondary boycott picketing to 30 days and that is needed.

Secretary Dunlop went on and amplified the last two points. He said he favors the private settlement of disputes and written authorization by the national union after 10 days' notice and notice to the employer involved as well as the national management association should be required.

We would have some comments on that.

We think that if you are going to go ahead with this legislation, you have to realize that not all the national labor organizations are as responsible as everybody would like them to be and that this authority is to be delegated to people that may be even less responsible.

We feel the national authorization should come from the head of the building and construction trades department for every instance of the use of secondary boycotts.

We feel the authorization when it is given by the head of the building and construction trades department should go to all of the contractors at the site because they are all going to be affected by his action.

Finally, on the 30 days limited duration of picketing, we endorse this.

We think that as Secretary Dunlop said, it is necessary in order to recognize the separate entities in the industry and reduce conflict, and thus we think the bill ought to be modified so it not only limits secondary boycott picketing to 30 days, but disallows the tandem picketing process, as you have it now in the industry during organizational picketing, one union will picket for 30 days, and when that 30 days is up, another union will come in. You do not accomplish anything by putting this kind of 30-day limit on the picketing.

We think the legislation will be enhanced if you have a 30-day limit on secondary picketing, but you disallow tandem picketing, or consecutive picketing by all of the 17 building trade unions.

We would suggest some additional safeguards in addition to those that Secretary Dunlop suggested to you yesterday: (1) That secondary boycott picketing not be allowed on any projects where everybody on the project is paying union wages and (2) that it not be allowed on any job site that is 100-percent union.

All of these recommendations would help the union sector of the construction industry.

It would mitigate the effect that we see coming out of the legislation that is to reduce opportunities for union building trades men's work in the industry.

Senator Taft asked a question yesterday as to whether collective bargaining and picketing were intertwined, and our answer is yes.

We have a proposal on that. We feel that the only unions that should be allowed to use the secondary boycott would be those building trades locals which have (1) no restrictive work practices, (2) no product boycotts, (3) no featherbedding, (4) no discrimination against the minorities, and (5) have no record of violence on construction jobs.

On the subject of collective bargaining, if we can make some offers of advice, more as a marriage counsellor, as we are not directy involved in the collective bargaining process, we would suggest the process in the United States could be enhanced if you would do four of the following:

(1) Establish for all construction building trades collective bargaining agreements of a common expiration date of January 1. In doing that, you would eliminate whipsawing and eliminate contracts coming up in the middle of the building season.

(2) We suggest that you eliminate food stamps for strikers, at least not for wage strikers, because this type of legislation upsets the collective bargaining process. It does not affect us as merit shop contractors, but it puts the union contractor at the collective bargaining table behind the eightball, and there is no way he can bargain because there is not equal economic pressure.

The CHAIRMAN. I think you ought to keep the kids off the picket lines, too, if you are going to take the food stamps away from them.

I do not get this food stamp business.

What has that to do with it?

Mr. ABRAMS. Let me tell you what happens.

The whole basis of collective bargaining is economic pressure on both sides.

The CHAIRMAN. But what is this guy with a kid who has to go to school on an empty stomach got to do with it?

You cannot sell that one around here. You better stop that one right here.

These other issues have a high degree of relevance, but you cannot use the youngsters on your side of the bargaining issue.

I just hope we will stop that one right here.

Mr. ABRAMS. (3) We suggest the repeal of section 8(e) which allows product boycotts, and the preservation of work strikes, and we suggest the repeal of section 8(f) of the National Labor Relations Act which allows the prehire agreement and has a 7-day hiring clause for construction instead of 30 days.

We believe these suggestions, particularly the common expiration date of January 1, would be a good start toward making union contractors more competitive in the construction industry.

Now, to summarize what the results of the legislation will be if passed in our opinion, and in the opinion of the entire construction industry, which has unanimously opposed this legislation: (1) The cost of union construction will rise due to increased work stoppages on union sites and enforcement of restrictive work rules exacted by secondary boycotts. (2) The time to complete the projects will escalate. (3) High priority projects will be stymied. (4) Independent construction unions will be eliminated. (5) Top down organizing will be attempted to replace union representation elections. (6) The construction industry will polarize to strictly union or strictly nonunion job sites. (7) The consequent confrontations will be increasingly strife ridden and violent. (8) Productivity of union contractors will diminish. (9) More projects will be awarded to nonunion contractors who have higher productivity. (10) Union tradesmen will suffer higher rates of unemployment.

The AFL–CIO building trade unions are among the most powerful in this country, Mr. Chairman. They dominate union contractors as shown by the fact they receive the highest wages and have the lowest productivity performance of industry.

They do not need, nor for the sake of the jobs of the members of the building trades union, nor should they receive, privileges which industrial unions do not have.

In sum, Mr. Chairman, secondary boycotts are detrimental to the labor relations policy and to the general economic policy of this country.

The CHAIRMAN. Thank you.

I wonder if some of your broad statements of conclusion could be supported with meaningful evidence for us?

This last observation you made, the lowest productivity construction is union construction. Is that the conclusion?

Mr. ABRAMS. This is the conclusion of the industry.

The CHAIRMAN. Well now, to make a statement like that you must have some hard factual evidence.

Mr. ABRAMS. We do.

The CHAIRMAN. I wish you would get that to us.

Mr. ABRAMS. We submitted the same to the House Committee and we will submit it to you.

The CHAIRMAN. Thank you.

How do you measure this?

Mr. ABRAMS. The Engineering News Record, which is the leading publication in the industry, published an article a year ago entitled, "Low Productivity, the Real Sin of High Wages."

How you measure it is the cost of doing a job at the same wage rates.

Also, you measure it in the amount of work that is nonproductive on a construction jobsite.

The CHAIRMAN. It is strictly the cost and you do not look at the final product in terms of its efficiency?

Is there any measure of the quality of the job?

Mr. ABRAMS. I am talking about equal quality.

The CHAIRMAN. Well now, that is what I would like to get to because I, personally, have observed some low-cost jobs, nonunion jobs, which because of the very low quality ended up to be far more expensive because there had to be a lot of tearing out of the walls to go back to the plumbing, to put it very simply to you.

I know this happened in New Jersey, and it was on May 17 that I went over to observe it.

Mr. ABRAMS. Yes.

The CHAIRMAN. I saw it.

Mr. ABRAMS. To follow that reasoning, I might say that a court of appeals building that was built by a union building contractor has collapsed and therefore all union buildings will collapse.

The CHAIRMAN. This happened to be a pattern, and it happened to be on a military installation.

Mr. ABRAMS. On military installations, I am surprised, because the inspections by the Federal Government are probably more rigorous when you have an open shop contract or than a union contractor.

The CHAIRMAN. There is a conclusion that does not bear factual analysis, either, because I know from my own personal limited experience as it is, that it is exactly to the contrary.

The post office in Newark, N.J., the marine terminal in Bayonne, are exactly contrary to your conclusion just made.

I was there and I saw it with my own eyes.

Mr. ABRAMS. I cannot contradict your personal observation.

The CHAIRMAN. That is why I wanted to see how you measure what factual basis you use for some of these conclusions.

For example, there is another one. I think you were suggesting that you put high unemployment in construction at the doorstep of the unions and I just wonder how you arrive at that.

I know that the residential housing is, at least in my State, 90-percent nonunion. Really the union construction in housing is limited to high rise.

Most of the single-family housing is nonunion, and we have had almost a complete moratorium in the building of residential housing.

It is coming back. We have put some stimulant into it and they seem to be working.

That had nothing to do with unions. It had a lot to do with whether people could borrow money. I do not see how you can make that broad conclusion.

Mr. ABRAMS. Because you are only talking about one sector of the construction industry—housing.

The CHAIRMAN. But, you see, the conclusion did not separate.

Mr. ABRAMS. No, I am not separating, because, in general, I am making the statement that projects in this country, that is, commercial and industrial projects——

The CHAIRMAN. If you will pardon me, that is not what you said.

Mr. ABRAMS. I said construction.

Do you want me to delineate further?

The CHAIRMAN. When we talk of construction workers, we are talking of the building trades and talking of all the trades, and that is where the high unemployment is, and a lot of that has nothing to do with what you are suggesting.

Mr. ABRAMS. Sir, you stated that housing is 90 percent built, open shop.

Let me say that I agree with you on that.

The CHAIRMAN. I know in my State it is.

Mr. ABRAMS. In general, throughout the country, except for San Francisco, Cleveland, Detroit, and Chicago, most housing in this country is built, open shop.

The CHAIRMAN. Well now, I would not state it that broadly, because I do not know.

Let me say that I am talking about single family residential housing.

Mr. ABRAMS. I am speaking to the same point Mr. Georgine spoke to when he said he had 600,000 of his men unemployed and the point I am trying to make is that the unemployment is there because people cannot afford to build projects.

As a contractor, you get the Dodge reports every day, which is a construction report.

You get more reports every day of projects delayed or postponed because of insufficient funds than you do of projects coming out for bid.

They cannot get the projects from the drawing boards to construction because of high costs.

Even dealing with Federal construction they have limited projects. There are housing projects that cannot be built.

In my State of Massachusetts, we have a Massachusetts Housing Finance Agency which is financing housing as a public agency, and it cannot get its projects built at a reasonable cost.

The CHAIRMAN. And you put all of this on the doorstep of union wages and union working conditions?

Mr. ABRAMS. I am putting a great deal of it on their doorstep.

Some of it is also attributable to interest rates, the availability of mortgage money.

I think a significant part of it, accounting for 5 percent of the 21 percent unemployment, is attributable to the high cost of construction.

The CHAIRMAN. Well now, you have substantially reduced the broad statement to 5 percent of the unemployment.

Mr. ABRAMS. I think 5 percent is a significant figure.

The CHAIRMAN. It is a significant figure but that is not what you said earlier.

You suggested broadly that this large New York-New Jersey 20 to 30 percent unemployment in construction is due to this, and the state of the economy must bear the dominant burden.

Mr. ABRAMS. Of course it does. And I did not say all unemployment was due to that but I am saying a significant part of it.

The CHAIRMAN. You said that is why we have high unemployment and you put it right there at the union shop.

Mr. ABRAMS. That is right.

The CHAIRMAN. It is more than that and you will have to agree.

Mr. ABRAMS. I agree that there are other factors but that is a substantial part of it, and an unnecessary part of it.

The CHAIRMAN. If the automobile industry has some plans for expansion, has that figure anything to do with the fact that they have the UAW or the fact that people are not buying automobiles?

Mr. ABRAMS. It is the fact that people are not buying cars.

The CHAIRMAN. Well, if you could send it to us, it would be greatly appreciated and you say you did offer it to the House and that you have offered it here but is there any reason we would not get the same material the House did?

Mr. ABRAMS. The House asked for it.

The CHAIRMAN. It was in response to a request?

Mr. ABRAMS. Yes.

The CHAIRMAN. Now, you have the request and I would certainly like to see how your sources have developed the conclusion on productivity, the fact that union productivity is significantly lower than the nonunion productivity in construction.

Mr. ABRAMS. I can submit to you the same information that was submitted to the House.

What it is, is a recapitulation of the sum of the more prevalent restrictive work practices in the industry. We can back this up. I will submit to you now that evidence, at this point.

The CHAIRMAN. One of the things that unions are watched very closely on is their membership practices and nondiscrimination in their unions and I know that does not apply where you have a nonunion situation.

We do not have any of the minority professions running into the union shop, but I can tell you again from experience that the positive demand upon unions against discrimination does not apply where you have the walk-in, nonunion people.

Mr. ABRAMS. Are you talking about a Federal project or in the industry?

The CHAIRMAN. I am talking about Federal projects and I will include any projects.

Mr. ABRAMS. It does apply to Federal projects.

I beg to differ, and I build Federal projects.

The CHAIRMAN. There is no responsibility in there. It is not fixed to where you have a union that is under a mandate to open up its membership.

Mr. ABRAMS. That is because they have a proven history in some unions and locals of discrimination against the minorities which you do not find as prevalent or as widespread in the open shop sector,

because many of the people who have been rejected because of union discrimination turn to open shop contractors for work.

I think one of the following witnesses will be able to testify on that better than I can.

Speaking as a contractor, who does Federal projects, I can tell you Federal EEO and Federal affirmative action projects are enforced more on open shop projects than they are on other Federal projects.

Under the Boston plan, any single contractor could continue to refuse to hire minorities as long as another contractor picked up his end of the quota.

We do not have that in the open shop sector of the industry.

The CHAIRMAN. What is your construction business?

Mr. ABRAMS. I am a general contractor.

I work throughout New England on multifamily housing, institutional projects, and medical buildings.

I am presently building a post office distribution center in Waterville, Maine.

I am building a nursing home in Great Barrington, Mass., and also low- and moderate-income housing.

The CHAIRMAN. Is your basic method of operation through subcontractors?

Mr. ABRAMS. We subcontract about 70 percent of our work.

The CHAIRMAN. Then you have 30 percent and you have a substantial construction employment in your own company, is that right?

Mr. ABRAMS. We spend 30 percent of the project dollars that we generate as contractors.

The CHAIRMAN. Do you handle any of the construction?

Mr. ABRAMS. Yes.

The CHAIRMAN. Through your own construction company?

Mr. ABRAMS. Yes, sir.

The CHAIRMAN. What part of it?

Mr. ABRAMS. Well, we do excavation ourselves. We do most of our concrete work, steel erection, finish carpentry, and then the general supervision of the job which is our primary responsibility.

The CHAIRMAN. It is a very complex business that you are in, in terms of understanding your hiring and personnel practices.

Do you have one contract with the unions that are part of your own company's operation?

Mr. ABRAMS. I have no contracts with organized labor.

The CHAIRMAN. No contracts?

Mr. ABRAMS. Right.

The CHAIRMAN. In other words, you are a nonunion construction company?

How about your subcontractors?

Mr. ABRAMS. Some of my subcontractors are union and some nonunion.

We award contracts to the lowest responsible bidder regardless of whether the contractor is union or nonunion.

The CHAIRMAN. Your company operates in many States. You do not, in your company, have a contract in any of those States with any union?

Mr. ABRAMS. That is correct, not since we have been in business, nor have we been asked to sign one.

The CHAIRMAN. Never have been?

Mr. ABRAMS. This is the point I was trying to make.

The unions do not want to organize my employees. They want my employees and the merit shop subcontractor employees to get out of the industry.

That is why we do not have that much organizational picketing. It is usually a 10(k) jurisdictional dispute where they are asking us to replace our employees with their people.

The CHAIRMAN. Do you get down as far as New York and New Jersey?

Mr. ABRAMS. No, I do not go there. Members of our association do.

We have 250 members in northern New Jersey, and 265 members in southern New Jersey.

The CHAIRMAN. Do they all operate as you do, as a general contractor without any union contract?

Mr. ABRAMS. They are generals and subcontractors. I know a few in New Jersey that have contracts with district 50 of the United Steel Workers, which is an industrial construction union; but, for the most part, they work as merit shop contractors.

The CHAIRMAN. When you say merit shop, how do you earn the right to be called a merit shop?

Mr. ABRAMS. Well, because we award contracts on the basis of merit to the lowest, responsible bidder, without regard for the labor policy of the contractor, and we pay our employees according to merit.

Mr. Chairman, we do not pay everybody the same wage. We pay our best men the highest wage, and the men who are just starting, or who have a problem in keeping up in quality or quantity of work. get a lower wage.

Our best men might earn more money than a union man, and the men who were just starting or do not do that high a quality of work probably earn less than the union scale.

The CHAIRMAN. Are there subcontractors in this category also?

Are most of your subcontractors part of the Associated Builders and Contractors?

Mr. ABRAMS. Many of them are. Many are not.

Mr. Chairman, that is not a factor.

The CHAIRMAN. Are any of them union contractors?

Mr. ABRAMS. Absolutely. I last night finished awarding a masonry contract. Masonry happens to be one area where the union contractor is not at such a great disadvantage.

Masonry is the most easily substituted form of material, and the masons union has been the most progressive in eliminating restrictive work practices throughout the country.

The masons in Maryland dropped out of the Building Trades Council because they felt they were being inhibited in their pursuit of work by the Building Trades Council, and they stated that 90 percent of their men are working for the merit shop general contractors.

Masonry is a trade that is often done union, on merit shop jobsites, because they do not have restrictive work practices, and so they can compete competitively through productivity with merit shop mason subcontractors.

We use union subcontractors in all the trades whenever they are the lowest responsible bidder.

The CHAIRMAN. Have you thought through some of the ideas that Secretary Dunlop was talking about yesterday in terms of the broader practices of arriving at decisions here and getting away from some of the difficulties of whipsawing?

Mr. ABRAMS. Yes.

The CHAIRMAN. The problems that arise by decisions being exclusively locally arrived at without any broader geographical area base.

Mr. ABRAMS. We are aware of the trend in the industry to wide-area bargaining.

Since we are not really involved, we do not have firsthand knowledge of what is permissible and what is not.

The CHAIRMAN. But you have had the experience of bargaining county by county.

Mr. ABRAMS. No; but we can see what happens in the local areas in New England where we work, and we are sure that if you pass a common expiration date for all collective-bargaining agreements of January 1, you would eliminate whipsawing and eliminate and somewhat equalize the balance at the collective bargaining table between the building contractors and the unions.

I think it would have a significant effect on the industry.

The CHAIRMAN. You would recommend that as Federal law?

Mr. ABRAMS. Absolutely.

The CHAIRMAN. In their contract dealings?

Mr. ABRAMS. Absolutely.

The CHAIRMAN. Senator Randolph, who is most interested in this, and I might say that we have had a discussion with Mr. Abrams and his associates from the Associated Builders & Contractors, who are not in favor of all of the provisions of this bill.

Senator RANDOLPH. I am sure there are many people and organizations who do not favor all provisions of this bill.

The CHAIRMAN. Mr. Abrams said contractors are in opposition to the bill.

We are beginning our struggle to find some areas of agreement because the construction scene seems to be in great disarray to many of us.

I will tell you, when you have one union going out today and they are off for 3 weeks, and then next week it is another one off, as we have seen in Washington, and I am sure you are not familiar with the Washington Metro, but something new has to be added to the construction scene, it seems to me, and I think it seems that way to the American public.

Mr. ABRAMS. I think the suggestion for the January 1 date for the common expiration date for all building trades agreements would solve all these whipsawing problems, and they would also equalize some of the pressures by bringing the agreement up for negotiation before January 1, instead of in the middle of the summer.

The CHAIRMAN. Well, it startled me at first, but now that I think about it, the idea that we, that is, the Federal Government, could impose this demand under law, you know, we have imposed an awful lot of demands upon union activity and prohibited actions that were rather startling.

We certainly have said under law that people cannot hold offices in unions if they have been found derelict in certain regards.

We put an onerous burden upon them that we have not put upon ourselves. We have limited their terms of office to far shorter terms of office than we enjoy as U.S. Senators.

We put a lot of burden to the area of labor life. This one should not be that offensive, that is a principle, something to think about.

I can see it would contribute to greater order and eliminate some of the difficulties.

Mr. ABRAMS. It would not help me, Senator, but I think it would help my union competitors.

The CHAIRMAN. Senator Randolph?

Senator RANDOLPH. Thank you, Mr. Chairman.

Mr. Chairman, as you know, I have just come into the hearing. Presumably, Mr. Abrams has given a statement, is that correct?

Mr. ABRAMS. That is correct, sir.

My statement has been entered into the record, and I have also given an oral statement summarizing that statement and answering some of the questions that came up in the hearing yesterday.

Senator RANDLOPH. How many companies do you represent, that is, builders and contractors?

Mr. ABRAMS. We have over 9,000 members throughout the United States. There are 50 percent of them who are subcontractors, 25 percent are general contractors, and the other 25 percent are suppliers and associate members in construction.

Senator RANDOLPH. Are you in any way connected with the Associated General Contractors?

Mr. ABRAMS. I personally am a member of the Associated General Contractors, but our association is separate and distinct.

In many instances, it is at cross purposes.

Senator RANDOLPH. What are the cross purposes that you indicate?

Mr. ABRAMS. Well, the majority of the members of the Associated General Contractors operate under collective bargaining agreements, and that determines a great deal of their national policy.

The majority of our members do not operate under collective bargaining agreements, so we find ourselves at odds for instance, on wage and price controls, where we were unequivocally against wage and price controls.

The Associated General Contractors was for their extension over a 2-year period prior to their being dropped by the Federal Government.

Senator RANDOLPH. Mr. Abrams, you say that ABC is a nonprofit organization. I am not critical of that word "nonprofit" here.

Would you clarify exactly what you mean in reference to nonprofit?

Mr. ABRAMS. Are you asking me a legal question, sir, or a general question?

Senator RANDOLPH. A general question.

Mr. ABRAMS. Well, the Associated Builders & Contractors does not operate at a profit or for the inurement of any of its officers.

Senator RANDOLPH. You could operate at a deficit?

Mr. ABRAMS. We could and we have.

Senator RANDOLPH. How many are on the staff of the organization?

Mr. ABRAMS. Approximately 30.

Senator RANDOLPH. Are they all located in one site?

Mr. ABRAMS. No. We have an office in Washington and an office at the Baltimore-Washington International Airport.

Senator RANDOLPH. I would ask you what type of large contractor groups you represent, from the standpoint of jobs that have been done. You have given categories of your membership.

Mr. ABRAMS. Most of our members are involved in commercial and institutional work.

Our members range from one- or two-man operations, who work out of their houses, with no overhead, to Brown & Root, the second largest contractor in the world. But the majority of our members have a volume of about $500,000 a year and are small businessmen in the construction industry.

Senator RANDOLPH. Your contractors do not only construct buildings, but they do also highway construction?

Mr. ABRAMS. Yes, sir.

Senator RANDOLPH. Now, I may be repetitive, Mr. Chairman, but I will have to ask a question or two further.

What is your main objection to the pending legislation which has been introduced by our chairman, Senator Williams?

Mr. ABRAMS. Our personal objection is that the parties to construction jobsites, the general contractors and subcontractors are separate entrepreneurial entities and recognizing them as joint venturers, that is in creating them as joint venturers, which they are not, we feel, as do all of the construction associations unanimously, is going to create chaos in the construction industry.

It is also going to polarize the industry into strictly union and nonunion jobs, and it is going to increase the amount of construction done by strictly nonunion contractors.

So we think it is going to be detrimental to the people supporting it, the building trades union.

We also think it is going to be detrimental to the union by creating layoff. By increasing strikes and violence on picket lines and the amount of picketing, in general, is going to increase the cost and duration of construction projects.

Senator RANDOLPH. Mr. Abrams, do you have nonunion members?

Mr. ABRAMS. A majority of our members do not have collective bargaining agreements.

Senator RANDOLPH. You mentioned the word "chaos" in characterizing the potential effects of this legislation. I wish you would explain that a little more to me.

Mr. ABRAMS. You know, in 1972 we were able to document 179 different instances of jobsite violence that resulted in property damage and personal injury on construction jobsites.

Senator RANDOLPH. Who was guilty of property damage?

Mr. ABRAMS. Well, I think 19 men have been convicted in Philadelphia out of 1,200 that assaulted a jobsite at King of Prussia, Pa.; that is, all 19 men were members of the Philadelphia Building Trades Council.

Well, they rented buses, went out to the jobsite and laid waste to it, demolished it.

There are instances that can be cited throughout the country. In Michigan we had a Shell Oil Refinery that was being built. The Governor of Michigan had to send 500 State troopers up to Kalkaska, Mich., to keep the peace.

The Governor of Michigan called that guerrilla warfare, when he sent the State troopers up there.

We have had similar instances in Memphis, Tenn., where a Ramada Inn was demolished.

We have had an incident in Fort Lauderdale, Fla., where a new building for a Volkswagen dealership was torn down.

During this year, we have had three different instances in Massachusetts.

Senator RANDOLPH. Mr. Abrams, I wish to state for the record that I do not believe in the destruction of property. I am sure that others on the committee here do not believe in the destruction of property, whether that is by union members or by nonunion members.

Now, the destruction of property that you have mentioned, was that by union or nonunion members?

Mr. ABRAMS. The cases we have been able to document were by union members, and the convictions that are on record, and the settlement agreements before the National Labor Relations Board in the Michigan case, all involve building trades councils and members of building trades councils.

The chaos is not restricted to violence. The chaos would also include continual picketing on jobsites that would be strictly union.

For instance, if one subcontractor was late with his fringe benefit payments, the way the law stands now, the union would have to picket just that subcontractor.

If this legislation is passed, the entire jobsite and the union contractors on that jobsite would be picketed, because the fringe benefit payment was late from one subcontractor.

This shuts down jobs, it reduces employment, increases the cost of construction, and that is the basic reason that this ability to shut down a complete jobsite—because of the late fringe benefit payment or because someone is using a boycotted product, or someone is trying to use a prefabricated boiler or a prehung door—that is what is going to create the chaos, particularly in the union sector of the construction industry.

Senator RANDOLPH. Chairman Williams has mentioned the Metro shutdown strikes here in Washington and so forth.

I would like for you, Mr. Abrams, if you have knowledge of those shutdown strikes, to give to the subcommittee the reasoning that you have that the condition that now exists would be aggravated by the passage of this legislation.

Mr. ABRAMS. Well, Senator, I am not familiar with the Metro problem, but Mr. Trimmer, our executive vice president, is a local resident and he may wish to comment.

Mr. TRIMMER. I would answer, to some degree there have been union and nonunion people involved in some of the Metro work.

There has been substantial pressure upon the nonunion contractors involved there, and some of them have signed up; but that is not directly answering your question. I think it goes back to what Mr. Abrams was saying a while ago about the staggered expiration of contracts.

Here you have a situation in which one, two or three contracts are following each other, so you have the whole job shut down while the one strike is settled; and it is just about ready to resume, and the

negotiations begin on the other, and the second union goes out on strike, and I think this has happened three times in the course of Metro operations this summer.

Here you have a disruption which is really not directly related to what we are talking about, but it is directly related to the difficulty of the collective bargaining process in the construction industry.

Senator RANDOLPH. Mr. Chairman, I was unable to be here yesterday. Secretary Dunlop, as I understand it, cautioned, even though he approved the purpose of the legislation, that whatever is done, that it not be allowed to generate acrimony which could poison labor-management relations in the construction industry.

I am not just sure, having not been able to question him, but would you comment on what he was saying from the standpoint of a caution?

Mr. ABRAMS. I think Secretary Dunlop, in that statement, and as I understand it from other conversations, was referring to the process of discussing the legislation as we are today, that it not be done with acrimony or with namecalling, and I think we all endorse that.

It certainly serves no purpose.

I do not think he was directing his comments toward what the results of the legislation would be, and whether it would create what we have called chaos in the construction industry, an increase of picketing, and the increase of confrontations which is directly contrary to the purposes of the National Labor Relations Act, which was to reduce labor strife in this country.

Secretary Dunlop also made the comment that he was not sure whether this legislation would enhance or reduce the union segment of the industry.

That is significant. We are prepared to discuss the issues without acrimony.

Senator RANDOLPH. Would you wish to comment on the basic reason that Secretary Dunlop has come out in support for the pending bill with certain modifications? I am not sure what they are because I was not present, but that is the report to me.

Would you care to discuss that?

The CHAIRMAN. One of the significant ones is that no strike, no picketing could take place without the national union being notified and okaying it.

In other words, getting away from this irresponsible, local picketing and striking, bring it to a higher level of determination. You will get it away from the local aspects. That was one of the provisions.

Senator RANDOLPH. Mr. Chairman, are you in agreement with that modification?

The CHAIRMAN. Yes; I rather like it.

Senator RANDOLPH. Was there another in his list of modifications?

The CHAIRMAN. A 30-day limitation on this kind of picketing. That has more problems that we have not fully explored. There was also the 10-day notice and the national intramodular I liked. I put those two together.

Mr. ABRAMS. He also suggested that independent unions be protected from secondary boycott picketing and suggested that in States where prime contracts are let by the State, the 10 States where prime contracts are let to four contractors, not one contractor, that they be exempt from secondary boycott picketing.

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He suggested different language for the bill:

No present lawful activity should be transformed into lawful activity.

The language in the bill might lead to an ambiguity.

Senator RANDOLPH. I believe, Mr. Chairman, there has been support for the policy of this legislation by prior administrations before the position in the Labor Department now held by Secretary Dunlop; is that correct?

The CHAIRMAN. That is right. The record yesterday was made that President Eisenhower was the first to indicate support for the principles in the bill and followed by each succeeding President.

I do not know whether President Nixon was included in that group, but President Ford is, through Secretary Dunlop.

Mr. ABRAMS. It was noted that Secretary Shultz's endorsement, which was reiterated by Secretary Dunlop, included the six stipulations that we discussed with Secretary Dunlop, that he brought forth.

Senator RANDOLPH. The six stipulations?

Mr. ABRAMS. There are six stipulations made to the legislation by Secretary Dunlop that had been made by Secretary Shultz.

The CHAIRMAN. They were discussed yesterday, Senator Randolph.

All of the Shultz suggestions, one way or the other, I think, were accounted for in the synthesis of Secretary Dunlop, I believe.

Mr. ABRAMS. That is correct.

Senator RANDOLPH. Mr. Chairman, I have noted now the testimony of the Secretary yesterday and other than common site picketing, no present unlawful activity should be transformed into lawful activity.

Do you have any comment or statement on that?

Mr. ABRAMS. No. I think that is constructive, and will enhance the legislation, but the language in the legislation now could lead to problems because it says labor practices not previously adjudged unfair, which means if something had not been adjudged unfair, it could not be made fair with the revised language. And I think is clearer and more in line with the intent of the committee.

Senator RANDOLPH. Now, in checking the testimony of Secretary Dunlop, the one, two, three proposals for modification that he has indicated are similar to the suggestions made by Secretary Shultz. He says that most of these positions that he had Secretary Shultz take have been incorporated in the bill as it is now introduced, S. 1479.

Would you give me your opinion as to whether those suggestions have in fact been incorporated?

Mr. ABRAMS. Some have and some have not. I can tell you which ones have not.

The language which says, no presently unlawful activity should be transformed into lawful activity is not the language in the legislation.

I think that is a question of clean-up or revising the language. The language now says that if something has not been adjudged unfair, that it would not be unfair and could not be adjudged unfair in the future.

The legislation does not include the exemption for contractors operating under State laws requiring separate prime contracts, which is a suggestion by both Secretaries.

The legislation does not include an exemption from secondary boycott picketing against independent unions which the legislation does not include.

The discussion of the enforceability of no-strike clauses by injunction was gone into yesterday, and everybody agreed that the Supreme Court decision obviates any necessity for that in the legislation.

The encouragement of private settlement of disputes and particularly Secretary Dunlop's recommendation of 10-day notice to national labor and management associations and authorization by the national union after the tripartite arbitration.

The limitation of secondary boycott picketing for 30 days is not included in the legislation.

Senator RANDOLPH. Mr. Chairman, is that your understanding?

The CHAIRMAN. The House bill has added the wording:

> Except as provided in the above proviso nothing herein shall be construed to permit any act or conduct which was or may have been an unfair labor practice under this subsection.

That deals with part of the discussion here, and I think it has a lot of merit. That was added in the House bill yesterday, in the committee, as I understand.

Senator RANDOLPH. Mr. Chairman, I shall not go longer, except to maybe ask one or two more questions, if I may.

The CHAIRMAN. As you know, Senator Randolph, we have a longer period of time in which to operate than we expected yesterday when we set this hearing for 9 o'clock this morning. We can go until noon today.

Take as much time as you require.

Senator RANDOLPH. I want to ask Mr. Abrams this question:

In the testimony of Secretary Dunlop yesterday, he quoted the prior Secretary, Mr. Shultz, and Mr. Dunlop said they were in favor of the purpose of the legislation, and Secretary Shultz used these words, "if that legislation is carefully designed to incorporate appropriate and essential safeguards."

Now, do you believe, Mr. Abrams, that legislation can be drafted and passed by the Congress which will do what Secretary Shultz said and what Secretary Dunlop has reiterated in other words?

Mr. ABRAMS. No, sir. I do not; because, in the beginning, the premise of the legislation is that everybody on the construction site is a joint venturer.

Senator RANDOLPH. A joint what?

Mr. ABRAMS. A joint venturer.

A definition of joint venturer is people who are sharing in the profit and loss. That is not the case in construction.

Contractors who work on construction jobs are separate entrepreneurs.

What you are asking me is can the Congress legislate that the color red is blue. I do believe that the recommendations that were made and some of the recommendations that we made would bring the colors closer together, but there is no way I can be convinced, nor can the unanimous opinion of all construction trade associations be convinced, that there is any way of, shall I say, short of taking the fiction out of the legislation that everybody is a joint venturer, that

there is any way this legislation can be made compatible to the industry.

Senator RANDOLPH. You are saying, then, there would be a restriction of competition within the construction industry if this measure becomes law; is that correct?

Mr. ABRAMS. What I am saying, sir, is the practice today of having union and open shop subcontractors and general contractors on the same jobsite would end because picketing on the secondary boycotts could not be restricted to the employer with whom the dispute is with and because of that, jobsites are going to be strictly union and strictly nonunion; and the result is going to be that the nonunion segment of the industry is going to increase the amount of construction it does because of its lower prices.

Senator RANDOLPH. Would you say that, as you view it, there is an inconsistency with what we know as the antitrust policy of the Federal Government?

Mr. ABRAMS. Well, the Supreme Court has found an inconsistency in section 8(e) of the National Labor Relations Act and in the *Connell* case.

I am not qualified to judge whether this legislation is an antitrust violation.

I must say I think it will reduce competition. I do not think the legislation, per se, would restrict competition, but would make the competition, instead of being between contractors who have the option of using the lowest possible bidder, it would restrict it to competition between strictly union setups and strictly nonunion setups.

Senator RANDOLPH. Mr. Abrams, a final question: Do you believe that the passage of this legislation would mean more strikes or fewer strikes?

Mr. ABRAMS. I think it would mean a great deal more strikes.

Senator RANDOLPH. Be specific now.

Mr. ABRAMS. Well, last year there were 3,000 secondary boycott actions brought by the National Labor Relations Board. There were 1,500 in the construction industry. This while it is illegal to do it.

If that is the case, I think we can all imagine what is going to happen in the industry when you legalize secondary boycotts.

You are now going to give more power to the building trades unions, particularly over union contractors, and they are going to increase the amount of strikes, because you will increase the effectiveness of those strikes on union jobsites, so that they are going to rely on that more and more. That is the unanimous opinion of all the construction trade associations.

Otherwise, the union trades associations would have no reason not to endorse it.

Senator RANDOLPH. Well, thank you, Mr. Abrams, and your associates.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Stafford?

Senator STAFFORD. Thank you, Mr. Chairman.

Mr. Chairman, I regret that other subcommittee assignments delayed my getting here.

Mr. Abrams, I have had a chance to read a fair share of your statement. I wonder, on page 7, Mr. Abrams, if I might ask you this question: If, as you allege on that page, there is no conflict between

current rules such as the *GE* case and those for picketing construction sites, such as the *Denver Building Trades* and the *Drydock* cases, how do you explain the National Labor Relations Board decision not to apply the same rules to construction sites?

Mr. ABRAMS. The difference between *GE* and *Denver* is that at GE, the employees at GE were on strike, and GE brought in a contractor to do the work of those striking employees.

The court found that that was legal picketing, and not a secondary boycott, and I agree.

There is no inconsistency with the *Denver Building Trades* case, where the subcontractor was not doing work normally performed by the general contractor, but was a separate entity doing a separate trade that has historically been done by separate contractors on jobsites.

General Electric was replacing striking employees, and under the laws today there is no conflict between *General Electric* and *Denver*.

If the general contractor was being struck by the union, and he replaced his employees with another contractor, then he would be subject to primary picketing. So there is no inconsistency between *General Electric* and *Denver*.

Senator STAFFORD. What activity, in your opinion, Mr. Abrams, would be permitted by or under S. 1479, should it become law, with regard to construction sites that is not currently permitted at industrial sites under the *GE* doctrine?

Mr. ABRAMS. If this becomes law?

Senator STAFFORD. Yes.

Mr. ABRAMS. At present, under the *GE* doctrine, if GE is being struck at the same time it has a contractor doing work on its plant, that contractor could set up a separate gate and that contractor could not be picketed.

That is the way it now works on construction. You are changing the rules and giving the construction unions the right to picket every contractor, including those who are neutral third parties, and with whom the unions do not have a dispute on that job.

You are taking a situation that is consistent with the *General Electric* case and *Denver*, and you are adding inconsistency. You are now saying only on construction can you picket people who are neutral third parties to a dispute.

Senator STAFFORD. Well, as I said, Mr. Abrams, I was not here to hear your testimony, but I have read particularly the last pages, and I guess it is fair to summarize that you and your associates are very strongly opposed to the adoption of S. 1479.

Mr. ABRAMS. Senator, not only are we opposed to it, but, as I stated at the outset in my testimony, every construction trade association, particularly all the union construction trade associations, those who have collective bargaining agreements, are unanimously against this legislation.

Senator STAFFORD. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. ABRAMS. Thank you, Senator. I appreciate having the opportunity to come and testify.

[The prepared statement of Mr. Abrams along with other material referred to follows:]

STATEMENT OF PHILIP ABRAMS
PRESIDENT OF ASSOCIATED BUILDERS AND CONTRACTORS
REGARDING S. 1479
BEFORE
THE LABOR SUBCOMMITTEE OF THE
LABOR AND PUBLIC WELFARE COMMITTEE
JULY 10, 1975

I wish to thank this subcommittee for allowing me to appear here today on behalf of the Associated Builders and Contractors. I am Philip Abrams the President and chief elected officer of ABC as well as a General Contractor from Boston, Massachusetts. ABC is a nonprofit organization with approximately 9300 members in 47 states whose membership is comprised of union and nonunion construction general contractors, subcontractors, suppliers and others involved in the construction industry. Our headquarters are located at Baltimore-Washington Internatonal Airport and in Washington, D. C., while our 48 chapters maintain offices throughout these United States.

ABC's basic tenet is the Merit Shop philosophy in the construction industry. We believe that union and nonunion workers and contractors should be able to work side by side on construction jobs in harmony. Our philosophy has taken root in the industry and grown rapidly as Merit Shop Contractors use skill and productivity to build an increasing share of this country's construction projects.

We are understandably concerned about the construction industry and the federal laws which pertain to it. We are especially concerned about S. 1479 because of the disastrous effects its passage would have on our nation's largest industry, particularly the union segment of it, leading to polarization and critical strife within the industry. We oppose the passage of S. 1479.

The Consequences of S. 1479

Let me give an example of what S. 1479 would do. A general contractor is awarded the bid to do a complete renovation of an embassy building in Washington. His employees are not union members. A plumbing subcontractor and an electrical subcontractor are to do the plumbing and electrical work respectively. The electricians belong to a union, but the plumbers do not. The building trades council pickets the project. The general contractor, utilizing a practice approved by the NLRB and the Courts, sets up a separate gate for the general contractor and plumbing contractor's employees on the one hand and the electricians on the other. The picketing is confined to the gate used by the general contractor and the plumber. The union has not lost its right thereby to peacefully advertise its dispute to the employees of the contractors or to the public. Work goes on as usual at the site. Were S. 1479 to become law, the picketing could not be so confined. The entire project could be picketed. The electricians would refuse to work at the site. The only recourse would be for the general contractor to discontinue the electrical subcontractor, depriving his men of employment, or for the general and the plumbing contractors to do what has to date been considered a violation of law, tell their employees to join the union and have them do so.

S. 1479 Aimed at Supreme Court Decision and NLRB Ruling

The drive for the proposed legislation before us today is a regular occurrence. It arises largely because the building trades unions have never liked the decision of the Supreme Court in 1951 involving the National Labor Relations Board and the Denver Building and Construction Trades Council.*

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* 341 U.S. 675

In that case, like the embassy case I cited, the unions sought through picketing to close down the entire project because the employees of an electrical subcontractor had not chosen to join the union.

The unions made the false argument, and they still make it, that there are no neutral or secondary employers at a construction site; that all of the subcontractors and suppliers are engaged in one big joint venture.

The Supreme Court in the Denver case looked to the realities of the situation and found to the contrary - that the various contractors and subcontractors on a construction project are in fact separate employers - that they are independent contractors.

ABC supports the soundness of the Court's decision in the Denver case, which shields "unoffending employers and others from pressures in controversies not their own."

In harmony with the Denver Building Trades case the National Labor Relations Board laid down rules which permit picketing construction sites as long as the unions do not direct their picketing at neutral or secondary employers. These rules, it should be noted, are not discriminatory because they apply to all unions alike whether in or out of the construction industry. The rules to which I refer, later supported by the Court, were set forth in 1950 in the famous Moore Drydock case.* The decision in that case, which is law to this day, permits common situs picketing, but says:

1. The picketing must be limited to times when the contractor with whom the union has its dispute is at work at the common site.

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* Sailors Union of the Pacific, AFL, and Moore Drydock Co., 92NLRB 547 (1950); Markwell & Hartz, Inc. 387 Fed. 79 (CA5) 1967, Cert. denied 57LC#12, 701 (1968).

2. The picketing must be limited to times when the dispute is on the secondary or neutral employer's premises.

3. The picketing must be limited to places reasonably close to the place where the primary employer (the union target) has his men at work.

4. The picket signs must clearly show that the dispute is with the primary employer. There must be no implication that a neutral is a party to the dispute.

In order to make the rule fair at construction sites, the Board has held that employers may set up a reserved gate for the contractor or subcontractor with whom the union has the dispute. The union is allowed to picket the gate so reserved for the primary employer.**

S. 1479 would sweep away the progress made in establishing these rules of fair play that have been set up for construction site picketing. It would completely destroy the limited protection neutral employees and employers now have against secondary boycotts in construction.

It is particularly ironic that the building and construction trades unions should seek a special privilege that is so closely related to the ambit of secondary boycott. Despite the fact that the secondary boycott has been illegal since the passage of the Taft-Hartley Act, these particular unions have been the most frequent offenders in this regard. During fiscal 1974, there were some 2600 secondary boycott charges lodged with the National Labor Relations Board. Of these, 1317 were placed against the building trades unions.

** American Modulars Corp. 203 NLRB No. 162 (1973); Steelworkers v. NLRB 376 U. S. 492 (1964)

If a setting such as that envisaged by S. 1479 is realized, there is no doubt that there will be more disruptive secondary boycotts plaguing an already greatly depressed industry.

Moreover, the point is worth making that the original Labor Relations Act was intended to curb industrial strife and realistically nothing could be more conducive to that very kind of strife than if S. 1479 were made law.

Testimony on this measure has been strangely silent upon the ugly fact that the building trades unions have within the past five years been involved in hundreds of incidents involving mass picketing of job sites, personal violence, gunshot cases, vandalism of costly equipment, dynamiting of construction sites as well as arson. Damage has amounted to millions of dollars.

Many small contractors have been subject to endless harassment.

The situation two years ago became so grave that it was necessary for our association to file a broad scale national proceeding which is not finally adjudicated. In the process, some strong orders have been issued by the National Labor Relations Board and the Federal District courts in recognition of the seriousness of the situation.

Lack of Understanding of Construction Industry

In connection with the proposal to enact S. 1479 I would like to observe where we are today in construction. I firmly believe that most Americans, including members of Congress, don't understand our industry and, therefore, can't properly appreciate what our problems are.

The industry is made up of over 300,000 independent contractors ranging from one man shops to huge corporations performing billions of dollars of construction. The average contractor, however, is a small business doing under $500,000 volume and he is fiercely independent and competitive. Many start in business with few tools and equipment but they succeed if they couple these with skill acquired as a worker or foreman for others plus a willingness to work hard and long hours.

These contractors come together on a construction jobsite to build by joining together millions of pieces of a jigsaw puzzle with skilled and unskilled workers into a unique, and never to be repeated, structure. Most often they are bound by either a verbal or written contract to a prime contractor engaged by the project owner (contrary to other industries, many contracts in construction amounting to millions of dollars are still performed on handshakes). Attempts to coordination and management of the construction site meet with varying degrees of success and most often determine the profitability of a contract. The undertaking is gargantuan, the atmosphere hectic and oft times confusing, but the hundreds of entrepreneurs involved in each construction project, while running into and over each other, manage to build America. The methodology may not be perfect but for the most part the uniqueness of each project despite great recent efforts defies industrialization as other industries know it.

When we combine that methodology with governmental regulations: recession and booms; owners, bankers, architects and engineers each with unique idiosyncracies; shortages of materials; and labor relations, we begin to get a minute taste of the flavor of the construction industry. Most construction people,

labor and management alike, if they agree on nothing else, agree that nobody outside of the industry really understands construction. For this reason perhaps construction has historically been given ill conceived special favored legislative treatment.

Proponents of S. 1479 say they are only seeking "equal rights" enjoyed by industrial unions. They point to the G.E. Reserved Gate case* as justification for this contention. But the G. E. case and the Denver Building Trades case do not differ in the treatment given to a union's right to picket. Both cases affirm the union's right to picket a primary employer with whom it has a primary dispute or anyone hired to do the same work as employees on strike. Both cases deny a union the right to strike an innocent third party to a dispute whose employees are performing entirely different work.

In the G. E. case, a contractor was brought in to do work normally performed by G. E.'s employees then on strike. Picketing against the strike-breaker contractor was allowed. In the Denver case, a nonunion subcontractor was performing electrical work which is always done by separate entities on a construction site. Picketing against the general contractor who had no control over the electrical subcontractor's labor policies was found to be illegal.

There is no conflict between the two cases: equal treatment does exist today; the construction unions with S. 1479 seek more than equal treatment. They do have the same right today as industrial unions to publicize by picketing the existence of a labor dispute.

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* (1961-366U.S. 667 - 48 LRRM 2210)

Special Privilege Legislation and Its Effect on Construction

The legislative history of the construction industry is replete with special favors. The net results of such legislation have been the opposite of those intended to assist the union building tradesman at the urging of the AFL-CIO Building Trades Unions. They have resulted in the highest wages (average skilled construction worker earns $10.36/hr. - Jan. '75) and lowered productivity, all of which have lessened the markets for Union Contractors and contributed to inflation and the growth of Merit Shop construction.

ABC, as a proponent of the Merit Shop, could very well sit back and allow the situation to fester while our members continue to grow in number and size. We do, however, believe that a strong and viable union construction industry is a necessary part of the American economy and a necessary counterpoise to non-union construction. In the words of Supreme Court Justice Brandeis:

> "The ideal condition for a union is to be strong and stable, and yet to have in the trade outside its own ranks an appreciable number of men who are non-unionists.....Such a nucleus of unorganized labor will check oppression by the union as the unions check oppression by the employer."

We endorse this and therefore will take the time to point out to you the counterproductive results of special privilege legislation as follows:

A. Section 8(e) Proviso of the National Labor-Management Relations Act (so-called Hot Cargo Exemption).

Under the construction proviso in this section, the construction unions are given preferred treatment. This section has made possible the banning of products made without union labels and agreements to prevent subcontracting to nonunion subcontractors. This results in higher costs for union contractors who can't buy the least expensive materials, often

can't use high productivity products, such as premachined doors* or preassembled boilers, and can't award subcontracts to the lowest bidder. This means a less competitive strength for union contractors, fewer jobs for union tradesmen and higher construction costs fueling inflation.

B. Seven Days to Join Union

While in other industries a new worker has 30 days after being hired by a Union Shop business to join the union, in construction a new employee has only seven days.

The result is that the Contractor doesn't have enough time to evaluate men in terms of long-term employment before they must join the union and pay an unusually high initiation fee. Thus, contractors hire almost exclusively from the union hiring hall which in many cases acts to deprive minorities of these job opportunities and gives the union an inordinate amount of control over the union construction work force.

C. Eight Hour Overtime Provision

On federal construction it is required that overtime be paid after eight hours are worked in one day instead of after 40 hours are worked in one week. This provision has been carried over into collective bargaining agreements. The result is that union contractors lose their flexibility and can't work longer hours on good days to make up for days with bad weather, accentuating seasonality and a short work year. They also are penalized on operations such as concrete slabs that require more than eight hours to complete. Again, the union contractors' competitive position suffers and the union worker finds fewer job opportunities.

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* National Woodwork Mfrs. Assn. v. NLRB, 386 U.S. 612 (1967)

D. Davis-Bacon Act

We will not go on at length concerning this anachronistic legislation that inflates government construction costs, decreases productivity, restricts minority opportunities and reduces employment under the name of setting "prevailing wages".

We would like however, to note, that legislation has distorted the collective bargaining process by assuring the unions that whatever demands they can win from contractors, will be institutionalized by the federal government and most states in their work. The construction collective bargaining process is none too effective, as you well know. The blind endorsement of the results of negotiations, which removes marketplace considerations with which, for example, the Autoworkers and Steelworkers must contend, when added to practices like whipsawing of trades, "sweetheart" agreements, national agreements, completion schedules and the general disunity of union contractors, so debilitates the process as to make wage settlements almost unilateral agreements.

We could go on and discuss other special privilege legislation passed for and at the insistence of the Building Trades Unions such as "prehire agreements". Congress has, indeed, made it possible for them to attain the highest wages in the United States and at the same time contributed to their persistent leadership in unemployment during recessions. Union contractors are suffocating from the power you have given their unions and when the management of union construction firms suffer in the marketplace then so do their employees. S. 1479 is more of the same. Passage of S. 1479 legislation could be the worst example of disastrous results from good intentions yet.

Objectives of S. 1479

The legislation proposed is multi-faceted and it proposes to:

1. Establish the fiction that all contractors on a jobsite are joint venturers.
2. On that basis, allow a dispute over wages, hours or working conditions with any contractor or subcontractor to be a dispute with all of them on the site.
3. Exempt employers who deal with industrial unions from the consequences of the legislation if they are only incidentally involved in construction (such as maintenance).
4. Stamp approval on all practices not previously adjudged an unfair labor practice, which can only lead to on new abuses.
5. Exempt from effects of the bill any picketing to enforce discrimination against minorities; and
6. Require 10 days notice if the secondary boycott will involve the defense or space establishment.

Results If S. 1479 Passes

The consequences of passage of this bill seriatim are:

1. Without regard to the true nature of the construction industry, passage of the measure would ignore the entrepreneurial individuality on a construction site and circumvent the secondary boycott prohibitions of present statute. The unions themselves recognize the individuality of the firms on a construction site by negotiating separate contracts with each trade's employers. But, under the proposal, innocent third parties would be embroiled in disputes not of their own making and over which they have no control.

The logical extension of this joint venture fiction is that, since General Motors and all of its suppliers build one product, then a dispute with G.M. or any supplier should be regarded as a dispute with all of them. Industrial unions will want the same right to use secondary boycotts under language similar to this joint venture nonsense.

2. Some examples of what would regularly occur:

   A. If one subcontractor was late in making fringe benefit payments to his union, the entire jobsite would be shut down.

   B. If any contractor tried to use a prefabricated product that would increase productivity, under the "preservation of work" doctrine the entire jobsite could be shut down.

   C. If any contractor purchased material without a union label, under the "product boycott" proviso, the entire jobsite would be shut down.

   D. If a jurisdictional dispute arose, or a wildcat strike occurred, the entire jobsite would be shut down.

   E. If one steward was fired, even for cause, the entire jobsite would be shut down.

   F. If one man refused to join the union after seven days of work, the entire jobsite would be shut down.

The sum total effect will be ruinous time delays and massive cost escalations.

3. Industrial unions not "engaged primarily in the construction industry" would not have the benefits of this amendment. What about the Christian Labor Association or the Congress of Independent Unions (CIU) or other construction unions which are independent of the AFL Building Trades Department? Their presence on the jobsite would provoke a shutdown of the entire site. The pressure on an employer, who has a collective

bargaining agreement with an independent union, would be brought from other contractors to abrogate his employees' rights or else his independent union employees would find themselves out of a job. Is unionism in construction only sacrosanct when it is AFL unionism?

4. Our interpretation of the language regarding labor practices not previously adjudged unfair is that it could preclude further administrative or judicial consideration of practices such as "Preservation of work" strikes or "standard agreements". While the courts are currently reviewing previous decisions, they would seem to be unable to review and decide issues that produce new types of unfair labor practices.

   The possibilities of this proviso are alarming. I mention two more of them. To seal off a construction site by picketing so as to prevent ingress and egress of supervisory personnel has not specially been declared an unfair labor practice. The reason is obvious. The fair rules of picketing for construction sites have made such a ruling unnecessary. Similarly, using pickets to seal off a military establishment to prevent ingress and egress has never been declared an unfair labor practice. Does the quoted proviso mean that picketing with such a result could take place with immunity - that it could not be prohibited as an unfair labor practice? If the language means what it says, such a result would accrue.

5. The mere necessity of including language to preclude secondary boycott picketing for strikes to promote discrimination brings some of the flavor of the problems among some construction industry unions to the forefront.

6. The 10 day notification for secondary boycott picketing at defense or space installations recalls previous labels as "10 day patriots". What happens after the 10 days if an unjustly struck contractor refuses to yield? The entire project is shut down as well as an any other construction at the jobsite as picketing takes place outside of all of the entrance gates to the installation. National security, after 10 days, of course, be damned.

   For that matter, in this day of priorities more pressing than defense and certainly than space, does this language, extracted verbatim from unsuccessful 1967 and 1969 Bills, place priorities on "space" over the environment, energy or other pressing problems requiring construction associated solutions? The Alaska pipeline would shut down from Valdez to the North Slope if one dispute with one of hundreds of contractors arose.

Results of Passage of S. 1479

We have alluded to what we know will be the results of this Bill on the construction industry. The Union Contractor will be hit hardest, his time to complete a project and his costs will go up and he will further lose in his struggle to remain competitive and AFL building tradesmen will lose more employment.

The most injurious consequences of the bill passing would be on union contractors.

There are other consequences as well. Independent unions would be destroyed. Employee rights under Section 7 of the NLRA to not join a union would be abridged as many employers would be put under pressure to force their employees to unionize. The spirit of Section 14B, in those states opting for Right-to-Work, will be breached. Innocent third parties will be subjected to

upheaval over, possibly frivolous, issues beyond their control.

Our concern is disastrous economic consequences to a struggling and depressed construction industry. Our concern is that S. 1479 will polarize the industry further so that projects henceforth will be either strictly union or nonunion. Our belief in and practice of utilizing both union and nonunion workers and contractors on the same jobsite will take a setback. The industry will become further dominated by strictly nonunion contractors working on nonunion jobsites where Common Situs picketing will have little or no effect. Our concern is also with the rights of employees whose freedom of choice, guaranteed under the NLRA, will be obviated.

The AFL Building Trades leaders claim they do not have equal rights with craft unions that can shut down an entire plant. If that is so, if the AFL Building Trades are so weak, why do they have the highest wage scale in all U. S. Industry? The fact is that their power over Union Contractors is so omnipotent that they are choking them and their employees to death. More power, more special privileges, would be a form of euthanasia at this point. They already have picketing rights equal to industrial unions and special privileges beyond that. They don't need S. 1479. For their own good and the good of the general public it should not be enacted.

ADDENDUM
TO THE STATEMENT OF PHILIP ABRAMS
PRESIDENT OF ASSOCIATED BUILDERS AND CONTRACTORS
REGARDING S. 1479
BEFORE
THE LABOR SUBCOMMITTEE OF THE
LABOR AND PUBLIC WELFARE COMMITTE

In the proceedings before this Committee, representatives of various building trades have contended that certain decisions of the National Labor Relations Board and the Supreme Court, interpreting the secondary boycott provisions of the National Labor Relations Act, have resulted in disparate treatment of labor organizations in the building and construction industry vis a vis other labor organizations. Specifically, the building trades representatives contend that the rules of law which govern construction site picketing are more restrictive than those which are applicable in other situations.

Soon after the passage of the first secondary boycott provisions in 1947, the Board and the courts were faced with the task of determining which "neutral" persons were protected from being enmeshed in a labor dispute and which persons could properly be subjected to the pressures of picketing and other appeals. The most difficult issues arose when the employer with whom the union had a dispute and other "neutral" persons were present at the same location.

In an early case, International Rice Milling, the Supreme Court held that a union could properly address appeals to employees of a customer of the primary employer at such time as those employees were at the primary's premises. However, on the same day, in Denver Building Trades, the Court determined that appeals to the employees

of contractors other than the primary contractor on a construction site were impermissible. The union, in that case, argued that the work of the various contractors on a construction site was so interrelated as to require a finding that all the contractors were a single employer and thus all "primary" employers within the meaning of the secondary boycott provisions. The Court specifically rejected this argument finding that the contractors were in fact independent of each other.

Later, in the General Electric case, the Court held that the employees of "neutral" employers were subject to picketing while they were present on the site of the primary employer, if they were performing work related to the normal operations of the primary employer. In the General Electric case, as well as in International Rice Milling and Carrier Corp. (a Supreme Court case holding that the employees of a common carrier delivering and transporting goods to the primary employer could be induced not to enter the primary employer's premises) the unions involved in the disputes were all representing employees who were engaged in industries other than building and construction.

After the decision in General Electric, the Board decided the case of Markwell & Hartz, Inc. There a building and construction union which had a dispute with the general contractor on the job site picketed the entire site causing the employees of the various subcontractors on the site to

refuse to work. The union argued that the Board should apply the "work related" doctrine established in General Electric and that on that basis, the picketing of the entire site was permissible. The Board rejected this argument noting that in Denver Building Trades which was cited with approval in General Electric, the Court had expressly found that the relationship of contractors on a construction site was not such as to remove the "neutral" employers from the protection afforded by the secondary boycott provisions of the Act.

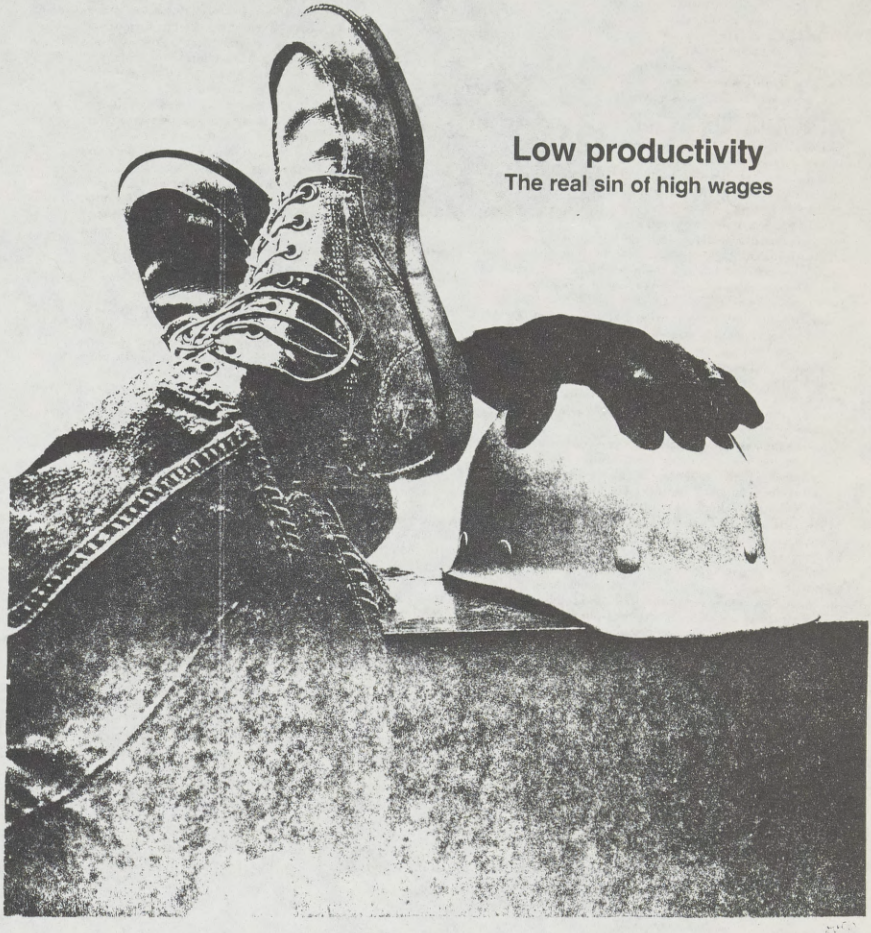
Apparently, because Denver Building Trades and Markwell & Hartz both involved building and construction unions whereas the other cited cases did not, the argument is now being made that the construction labor organizations are being discriminated against. It is submitted that this contention is devoid of merit. First, it is clear that the employee of "neutral" employers delivering goods and materials to the primary employer are subject to picketing. In fact, the only persons who are afforded the protection of the Act are those employees and employers whose only connection with the primary employer is that they are performing work at the same geographic location as the primary. The doctrine established by the Court and the Board thus accomplished the objectives established by Congress, by permitting a union to assert the ultimate economic pressure of closing down the primary employer's operations while permitting the neutral employers to continue their independent operations.

Moreover, this doctrine has not been applied only in the construction industry. In Crystal Palace Market, the primary employer owned a large market which housed 64 separate shops. The primary employer operated only 4 of the 64 shops and the remainder were operated by employers who leased space from the primary employer. When the union representing the employees of the primary's shops struck the primary employer in an economic dispute, they picketed nearly all the entrances to the market, thus inducing the employees of other shops to refuse to work. The Board found that by not limiting the picketing to the individual shops owned by the primary, the union had engaged in an illegal secondary boycott.

It is clear, therefore, that the principles established in Denver Building Trades not only are uniformly applied without discrimination but also effectively implement the Congressional policy which gave rise to the secondary boycott provisions of the Act.

Engineering News-Record

FEBRUARY 24, 1972 / McGRAW-HILL'S CONSTRUCTION WEEKLY /



Low productivity

The real sin of high wages

Special report

Low productivity: The real sin of high wages



Low productivity even more than high wage rates, is pushing the cost of construction in many cases beyond the reach of individuals, industry and the government itself.

According to a survey by ENGINEERING NEWS-RECORD among union and nonunion contractors, low productivity wastes from 15% to 40% of every construction payroll dollar. Since construction now has an annual volume of about $115 billion and the labor factor is about 40% of the total in place cost, Americans this year are spending from $12 billion to $16 billion for something they aren't getting.

Although labor shortages and hiring halls are admittedly critical elements, contractors blame low productivity in construction mainly on restrictive labor union practices. The result of these practices is that labor does not give a fair day's work for a fair day's pay.

Low productivity is not restricted to union labor but it is considerably greater on jobs where men have the protection of unions.

In extent, it ranges from overly long coffee breaks to outright falsification of payroll records. In its lesser ranges it is accepted by contractors as a way of life. In its extremes it is foisted on them by strikes, slow-downs, threats of violence and outright sabotage.

Some extremes are very extreme. On a project in the East last year, Joe W., a union-selected master mechanic who never uses a wrench, had earnings above $94,000. Because Joe's wage rate ranges from under $10 to over $11 per hour for a 35-hour week, it appears that Joe received about $18,000 in base salary—and $76,000 in overtime.

What does Joe do to earn this much? He spends some of his working time directing a staff of largely nonworking assistants whose pay rate is almost as big as his own. He spends the rest of his time on the telephone arranging for outside service men to repair machines on his job.

The total amount of his pay stems from a union requirement that he be paid for every hour that any man—either one of his mechanics or an outside service man—is working on the job. And when the total time spent in maintenance exceeds the basic 35 hours in any week he receives double time even though he may be home sleeping.

While there is no proof that he is paid for sleeping, analysis of his wages shows that he had to spend a total of 5,620 hours on the job—108 hours a week, every week for the full year. At best Joe W. could have had only 60 hours a week away from the job.

Because of similar union contract requirements, Harrisburg, Pa., area assistant master mechanics gross $20,000 a year. In Anchorage, despite a short construction season, mechanics and operating engineers pull in $25,000 to $30,000 a year.

Contractors in the Chicago and Philadelphia areas have paid cement finishers as much as $1,000 a week and one claims to have paid $1,200. Wages for this work, which has a basic hourly rate of about $9, reach these top executive levels, because the men spend many straight time hours doing nothing while waiting for pours and then they finish the concrete during premium rate hours.

The tragedy of some high salaries is not so much their size as the fact that they usually have no correlation with value received or with time and energy expended.

A major complaint of many contractors is that value received is often in inverse proportion to the salary. The compressor engineer who begins a half hour early by pushing a starter button and then does nothing until it is time to turn his machine off at night often makes more money than men who work hard all day.

Records of many construction companies verify that as wages have risen productivity has fallen, often greatly.

An excessive, but certainly common example is found in a study of pay and production records of a Chicago-based general contractor that has been in business for 75 years and currently does about $50 million a year in building and heavy work.

Reverse progress. In 1926, when masons were getting $1.50 an hour (and no fringes) one mason could lay 600 blocks a day. Today, with masons getting about $9—and two masons are required to handle the block—the same contractor says it's lucky to get 100 blocks a day from the men.

This same contractor says that in many construction activities the advantages of labor-saving equipment (when allowed by unions) are more than offset by slowdowns. In 1926, when concrete was finished by hand, the contractor figured on getting 2,000 sq ft of finished concrete per man per day. Today, with the help of vibrators, mechanical screeds and power trowels, the company gets 600 sq ft per man per day. The reason for the decline in productivity, the contractor says, is that men just don't want to work today.

But it isn't necessary to go back 40 years to observe the effects of the various restrictions on productivity. The records of an eastern Pennsylvania builder of high-rise structures show that in 1966 it could finish a 5,000-sq-ft, 6-in.-thick floor with a direct payroll of $711.85. Today, because of increased pay rates and fringe benefits with no more, and usually less, productivity, the finishing of that same floor by the same crew, costs $1,187.73. Furthermore, if there is any steel in the floor, the contractor is now required by its union contract to hire an ironworker to watch the pour to completion at $65.60 per seven-hour day. As recently as 1966, the ironworker could be laid off or switched to productive work as soon as the steel had been set.

Until recently, too few people have wanted to do anything about productivity and those that did, couldn't. In

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fact, featherbedding, like many other problems of the industry, has long been recognized but just as long been tolerated.

Politicians, fearful of the political clout of unions, have, for the most part, avoided any direct confrontation with them.

Union officers on a national level, though relatively secure in their positions, have apparently been powerless to control the acquisitive ways of their local unions even while paying lip service to the desirability of doing so.

Local or regional union officers bow to the "we want more than the other fellow" demands even when they privately admit it is wrong and harmful. They can be voted out of office. One example of this was evidenced recently in Illinois, where workers demanded, in addition to a hot lunch at noon and $3 an hour increase on a one year basis, the right to reopen contract negotiations if any settlements made later with any other crafts provided a higher pay increase or better fringe benefits. Another typical example of this was witnessed in New York by ENR when a labor delegate, after vainly trying for hours to justify a pay increase for his men, said bluntly, "Hell, everybody else has a piece of the action, we want ours." He got it.

Intelligent and dedicated union members have become largely resigned to the futility of trying to effect changes within their organizations, and often stay away from meetings. By union figures, less than 10% of the 3 million construction union members regularly attend meetings. Many contractor representatives put the figure at closer to 5%.

Since construction is the nation's largest industry and admittedly a pacesetter for wages, the economy of the entire nation and its 80 million workers may be adversely affected by 150,000 to 300,000 construction union members.

. . . Last year, an East Coast master mechanic parlayed a maximum $11.00 hourly wage into a yearly salary over $90,000. About $76,000 was for overtime.

The economics of construction coupled with legislation and court decisions that tie their hands both at the bargaining table and on their jobs has made contractors reluctant to fight inequities, particularly since the cost of these inequities largely could be passed on to owners or taxpayers who even now are only vaguely aware of the extent to which they are being victimized.

The climate changes. But the picture is changing. Politicians have come to realize that the high cost of public construction affects taxes and voting habits, even of union members. They are beginning to realize that nonunion people who can't afford badly needed homes, schools and hospitals also vote.

Responsible labor leaders on a national level, faced with public outcry against them and a tremendous increase in open shop operations in many parts of the country, have accepted the need for government controls on their industry.

Union men throughout the country have seen a rise in open shop operations unprecedented even during the Depression. As recently as last April, Frank Bonadio, president of the Building and Construction Trades Department of the AFL-CIO, warned union men that in the previous two years open shop contractors had taken more than $7.5 billion worth of powerplant construction alone away from unionized contractors.

The 9,000 member Associated General Contractors of America reports that today 35%—more than 3,000—of its members do more than half of their work under open shops. Some 20 years ago, when the organization had about 7,000 members, fewer than 10% of them even dared consider open shops.

Even on jobs that remain in the domain of unionized labor, labor is losing ground, as architects and engineers, contractors and owners, fed up with labor excesses, seek and find better, faster and cheaper ways to build.

Dry wall construction has completely replaced lath and plaster in many places. Precast concrete structures have so greatly reduced the need for bricklayers and cement finishers that in many parts of the country there is a surplus of these tradesmen.

Prefabricated steel buildings are increasingly gaining favor because of their economy and speed of erection. From 1956, when metal building sales totaled only $85 million, sales rose to $385 million in 1970 and are expected to reach $570 million within the next two years (ENR 10/21/71 p. 35). One sizable mid-country designer-builder says that until five years ago it never had a call for a steel building, now at least half of its inquiries request at least consideration of such structures.

Contractors are beginning to stand up to unreasonable labor demands if for no other reason than that they are being hurt financially by them. High wages and low productivity have begun to price construction out of the market.

Even union members are becoming fed up. While the figures are not necessarily reflected in reductions in the number of construction workers belonging to unions, contractors in areas where there are open shop operations report that many union men are working on nonunion jobs. Among the reasons: the pay is usually about the same; often fringe benefits that normally go to union dominated funds are paid directly to the workers in an open shop; because they can cross trade lines men find their jobs more diversified, more interesting— and steadier.

Laws are a mess. Laws and government agencies at all levels of government receive a major portion of the blame from contractors both for the high costs of construction and for the low productivity of union labor.

On the national level the National Labor Relations Board (NLRB) comes in for the greatest criticism.

There are three major complaints: It is pro labor; its representatives too often refuse to make rulings that can be widely applied, preferring to judge each case individually regardless of its repetitiveness; it takes so long to reach decisions that contractors usually cannot afford to wait for them but must bow to union demands, right or wrong.

The Davis-Bacon Act also comes under heavy fire, but not from all contractors. Union contractors working in largely non-union or weakly organized areas favor it as a form of protective tariff. It tends to reduce the competitive advantage of open shop firms, which may have lower pay rates and greater productivity. Open shop contractors, on the other hand, call the law "the worst kind of price fixing." Many claim it adds as much as 15% to the cost of jobs affected by it.

State and local laws also play an important role in raising the cost of construction and in decreasing the productivity of labor.

There are few sections of the country and virtually no



. . . Unions limit membership to insure jobs for members

segments of the industry that are not adversely affected by legal restrictions on building operations including building codes and licensing laws. Almost every restriction of this type is justified by those who profit from them as protecting the health, the safety and the general welfare of both construction workers and the public.

A bill introduced into the New York state legislature every year for the past decade to protect the health of construction workers would require that a licensed plumber check all toilets on jobs both before the start of the work and after the end of work each day (at overtime pay) to make sure they had been flushed. This bill has been defeated each year, mainly because of the watchfulness of the New York State Building Chapter of the AGC, but it keeps popping up.

Even where legal restrictions have been imposed in good faith, unions take advantage of them to drag out construction time, to put unnecessary men on the job and to eliminate labor-saving methods and tools. Prohibitions on the use of speedily assembled plastic pipe and of power-activated tools for installing anchors are but two of the countless legalities seized on by unions to delay and increase the cost of construction.

And the consumer suffers, since restrictive legislation is often used by unions to block use of materials that would provide greater efficiency and reduce maintenance.

For many years many unions have required as a basis for full membership successful completion of a union-sponsored training program and/or an apprenticeship ranging in duration from a few months to several years. Many unions, notably the electricians, the plumbers, the steam fitters, the carpenters, the ironworkers, the sheet metal workers and the operating engineers, have restricted admissions to the programs and made apprenticeships overly long in order to limit membership and thus insure jobs by keeping their numbers in short supply.

The jurisdictional problem. Long a headache in the industry, the jurisdictional dispute usually puts the contractor helplessly in the middle. In almost any other type of work stoppage the contractor can get things going again by arguing and winning its point, by compromising or by giving in to the demands of a single union. Since the jurisdictional dispute is between unions, the contractor usually loses.

For example, a contractor on a powerplant job, using small gasoline-powered generators (net weight 150 lb), had to pay an operating engineer to watch each gas engine, an electrician to watch the generator on each machine and a pipefitter to watch the electric wires running from the generator to hand-held power tools operated by union men.

Laborers filled the tanks with gasoline and carried the units from place to place. This meant that each operating engineer received somewhere from $300 to $400 a week (without overtime) for starting once or twice a day a gas engine smaller than those on many home lawn mowers. And the electricians received the same kind of money for pushing the wire plug into the sockets on the machines whenever they were moved. The contractor involved says, "I never did find out what I paid the pipefitter for." Even without the pipefitter the payroll cost of operating each generator for one week almost equalled the cost of the equipment.

A common dispute is between operating engineers and elevator installers as to who shall run elevators in buildings under construction. Usually the solution to this particular argument results in a compromise that both unions win and the contractors and owners lose.

Usually, operating engineers run the elevators carrying tools and equipment and elevator installers run those carrying men. Often there is a demand from both unions to have a man on any elevator carrying men with tool boxes. The problem is generally resolved by keeping two elevators manned at all times so each union can be represented on the project, even though there is never more than one elevator in operation at any given time.

In Illinois recently, electricians claimed the setting of forms for the concrete foundations of power line towers, work traditionally done by carpenters. The carpenters retained jurisdiction, but not until after a two-week strike that cost the contractor $50,000 in overhead and an undetermined amount of extra costs required to get the job back on schedule.

The nozzle-dispute on the $1-billion Albany, N.Y. mall project has caused hundreds of stoppages on that job, which employs over 2,000 persons.

. . . An operating engineer gets $300 to $400 a week for starting and stopping two or three times a day a gas engine smaller than those on most home lawnmowers.

The argument, which is not settled, revolves around whether the teamster driving a fuel truck or the operating engineer running a machine shall hold the nozzle during the fueling operation. Both unions claim the job. Because holding the nozzle involves a certain amount of work, the question is why either union should want it, since regardless of which man does the job, the other still gets paid. The answer undoubtedly is that the union that gets jurisdiction will eventually be able to claim the need for a helper. This particular dispute has been reported as plaguing contractors in many states, including West Virginia, Oklahoma, Missouri, California and Washington.

One lamp, two men. In the Philadelphia area, an argument between the electricians and the carpenters as to who should install a chain-hung ceiling lamp with a wire and plug attached was resolved by using one man from each union. The carpenter screwed two hooks in the ceiling and draped the chain. The electrician put the plug into the wall socket. The contractor says he didn't like the arrangement, but admits it could have been worse. "I kept waiting for one of the metal trades to claim the draping of the chain."

The contractor found that it cost $40 a unit to install this type of lamp, and since the job was a 350-unit motel the total cost for installation was $14,000.

This dispute backfired against the unions. The contractor subsequently helped win himself another motel job by suggesting to the architect a less expensive table lamp that could be plugged in, at no cost, by permanent maintenance crews, after the structure was completed and the union men had left. The result: two union men lost jobs and the owner saved money.

The most common basis for featherbedding is the work rules set forth in union contracts.



. . . Coffee breaks can kill 15% of a seven-hour day

Contractors defend their acceptance of such rules as the result of the unilateral coercion exerted by unions during bargaining sessions, usually with government sanction, often with government help. A contractor with high overhead, expensive equipment rentals, contract completion deadlines and often costly penalty clauses is in no position to withstand a prolonged strike stemming from an impasse over a labor agreement.

On the other hand, labor union members, because of their mobility and because of the fragmentation of the industry, usually have no difficulty in finding work in nearby areas or even in other fields within the area. Strike funds provided by unions and unemployment insurance available in some states to strikers and the availability of permits from other unions with labor shortages, give the labor factions an upper hand.

A report on restrictive practices of the building trades, prepared by the staff of the Associated General Contractors of America acknowledges six major types of such practices that appear in union agreements signed by contractors:

- Prohibiting labor-saving machines.
- Requiring unnecessary work or the duplication of work already done.
- Excessive nonproductive time.
- Limiting the work load of employees or the number of machines a man can operate.
- Requiring unneeded workers.
- Restricting the duties of workers.

Interlocking restrictions. Restrictions on labor-saving devices and the requiring of unnecessary work go hand in hand, and one is often the result of the other. Both are prevalent throughout the unionized sections of the country, and both are a common basis for contractor complaints. Limitations on the width of paint brushes, prohibition of the use of paint rollers (in the absence of premium pay), union refusal to hang precut doors and requirements that machine-trowelled surfaces be hand trowelled afterward are but a few universally contentious subjects.

The consensus of contractors interviewed overwhelmingly favors the prohibition of unnecessary work and the removal of all restrictions on labor-saving devices. However, for a variety of reasons many contractors that oppose the restrictions worry less about them than they do other featherbedding techniques. One painting contractor said, "A good man with a 4-in. brush can do more work than a bum with a roller."

Another said, "If a union or a man is out to get you, he can do it without spelling it out in writing." A more optimistic view from a building contractor: "The increasing use of systems will eliminate many of the abuses we now have."

Almost every union contract provides for coffee breaks, morning and afternoon, and most contractors approve, because they say the breaks could decrease fatigue and increase efficiency. But where a union contract provides for a 10 or 15-minute break, on many jobs the men take 20 minutes to a half hour. This means that a man working a seven-hour day spends almost 15% of his time taking breaks.

On many jobs it is not uncommon for a contractor to have on the payroll at least one employee, known unofficially as the "doughnut man," whose main function is to run personal errands for the crew with which he works. Often the doughnut man is a journeyman receiving the same pay as the others, sometimes he is a lower paid laborer. In either case, most contractors accept him since, as one man puts it, "It is a hell of a lot cheaper than having a whole crew leave the job."

Travel and show-up time are two other big cost raisers. That are required in one form or another by unions.

Mileage is the most common basis for computing travel payments, but the actual distance travelled usually has nothing to do with the payment. It is based on the distance of the job from the contractor's office, the union hall, or in some cases, from the center of a city. One eastern contractor with a job in an outlying district reports that while his payroll records showed that almost 75% of his men lived within a 5-mile radius of the job site, he had to pay every man for 80 miles of travel a day since the job was 40 miles from the specified point of origin.

Pay but no work. Show-up time is money paid to men who come to a site but, because of bad weather of other circumstances, do not work or work for only a short time.

. . . Contractors agree to featherbed clauses in union contracts knowing they can generally pass the costs on to buyers of construction.

One contractor says, "Hell, I've had men show up without their tools, but wearing suits, obviously ready for a day on the town when they knew the weather was so bad they couldn't possibly work. Sometimes they even have their families waiting for them in the car."

Minimum pay for show-up is generally two hours. In many cities, a man gets four hours pay if he gets into his work clothes and some classifications receive a day's pay just for appearing on the job.

In some cases the limiting of work loads or the number of machines a man can operate is openly a part of a union agreement. In others, contractors say they know the limitations exist and that while they are obvious, they cannot be proved. In this respect bricklayers and cement finishers are most commonly accused of unilaterally restricting output—probably because their production is, and always has been, easily measurable in specific units of production. But other tradesmen are equally guilty.

The union contracts of operating engineers across the nation openly restrict the number of machines that a man can operate in one day. In most cases, a man is permitted at least one change; in some places he can make a second change provided it is back to the machine on which he started.

A classic extreme involves a cofferdam which, for reasons of economy, was not dewatered during the night. Instead, the contractor had an operating engineer start a 6-in. pump at 6 a.m. to get rid of the night's accumulation of seepage before starting time. With the water down by 8 a.m., a 3-in. pump was sufficient to keep the cofferdam dry.

The union would not permit the operator of the big pump to run the smaller one or work any other machine during the rest of the day. Neither would it permit the two hours prior to 8 a.m. to be considered as straight time. Consequently, in addition to having to pay an operating engineer to watch a 3-in. pump run for the regular eight-hour



. . . Featherbedding demoralizes the hard workers

working day, the contractor had to pay the first engineer 12 hours pay for two hours of work.

The limiting of the number of machines one man can operate overlaps another featherbedding tactic, the requiring of unneeded men. The most common example of this involves the operation of welding machines and compressors. Although these machines are started with the push of a button, run unattended all day and are turned off by the flip of a switch, unionized contractors in every part of the country report that for each such machine on a job they must have an operating engineer on the job at all times at $7.50 to $10 an hour.

On one large public job, which averaged about 40 machines for six months, (none of which was serviced by the operators) the tab for merely starting and stopping the machines came to more than $2,500 a day for a total increase in cost to the taxpayers of well over $250,000.

The costs of unneeded workmen can be even more noticeable on a small operation. A typical example is cited by a Southern welding contractor that specializes in fabricating large tanks.

Until six years ago a standard tank crew consisted of seven men, all of whom worked. One of these was an operating engineer who started three 300-amp welding machines then drove a pick-up truck, operated hoists and did other odd jobs during the day. Today that contractor has three nonworking operating engineers watching the welding machines run, and roughly 40% of his daily payroll goes to the non-productive men.

. . . Union electricians must be on hand where temporary lights are used. They are paid $7 to $10 an hour, around the clock, to watch the lights burn.

In 1965, the boilermakers had to assemble each tank on top of its tower from 18 partially fabricated sections. Today, because of improved hoisting equipment, they can assemble each tank from only four sections. Yet in spite of this tremendous reduction in difficult welding, it takes as long to fabricate a tank today as it did six years ago.

Why work? The contractor attributes a major part of the low productivity to poor morale of the workers because of the presence of the nonproducers. The welders wear heavy clothes even in summer to protect themselves from the arcs. They have to climb great heights and work in dangerous and uncomfortable positions. "What can I expect from them in the way of production when they look down and see three men getting at least as much money as they are for sitting comfortably in beach chairs, under the shade of beach umbrellas that protect them from the sun while they drink beer, do crossword puzzles or play cards."

Another make-work rule that pushes costs up throughout every unionized section of the country is one that calls for a master mechanic to be hired when five or more members of the union are on one job.

In most places the number five applies only to operating engineers so that a contractor can run four machines (even though they have oilers on them as well as operators) without a master mechanic. In other places (Kansas City is one) the oilers are included in the count. Thus two small cranes and a pump call for a master mechanic at a salary from $300 to $500 or more a week.

When the number of operating engineers on a job reaches 12, the master mechanic must have an assistant, whose salary is only slightly less than that of his boss.

In many parts of the country, oilers are required on machines that have only one seat and in fact that are so small that there is not enough room on them for the oiler to stand on them if the operator is in his place.

In some sections of California and in several Eastern states, unions require that large cranes be attended by two operators and an oiler or by an operator and two oilers. In either case, three men are being paid while only one works.

Many other trades also contribute to inflationary forces by calling for unnecessary men.

Watch them burn. Electricians have their own version of this technique. They require that a union electrician be on hand during any hours in which temporary lights are used. Since on many jobs the lights are never turned off, the attending electricians are paid $7 to $10 an hour around the clock week in, week out, to watch them burn.

The situation is pretty much the same with temporary heat since operating engineers are required on a 24-hour-a-day basis even though heaters are fully automatic. "It's like paying some guy $8 to $10 an hour to watch the oil burner in my home," says one contractor.

While many labor abuses are agreed to by contractors through acceptance in labor agreements, some of the most vicious and wasteful are nothing short of extortion by labor alone. Sometimes even these are accepted by contractors that gain financially from them—more often they are complied with by contractors whose only alternatives are to be put out of business or to lose a fortune. A frequent abuse of this type involves the rental, at unconscionable prices, of employee-owned equipment, usually trucks.

One New England contractor reports that at the start of a job several of his operating engineers (including the master mechanic) suggested, since the men already owned pick-up trucks needed to service equipment, it would be cheaper for the contractor to rent these from his mechanics rather than buy new ones. Because the rentals demanded were excessive, the contractor refused and provided the men with new, company-owned trucks. Within a few months the company's pick-ups were in such bad condition that they were virtually useless.

Aware now of the situation, the contractor scrapped its own trucks and rented those of mechanics. However, the price was then considerably higher on the premise that when the initial rate was set, the mechanics had "no idea the job would be so hard on trucks."

In some places even the union bosses get into this particular act on a grand scale. A major Eastern equipment rental company is owned by several officers of the regional operating engineers union. Contractors renting equipment from this company have a minimum of labor problems. Those renting from other sources, without first checking with the union-held company to see if it has equipment available, often have more trouble than they can cope with.

Even when a contractor has its own equipment, the union-owned company can exact tribute. Last spring a trouble shooter for a major construction company discov-



. . . Management must reassume management functions

ered that one of 12 cranes on a nuclear power-plant job had never been used, apparently was not going to be needed and looked in such poor shape that it couldn't safely be used if it were needed.

When he ascertained that this machine was rented fully manned as a standby, he called the rental company and informed it that the machine would be returned the next day. The next day, however, nothing moved. Twelve operators called in sick, and almost all work stopped. As soon as the unused crane was rehired, the operators recovered and work started up again. The machine is still being rented as a standby.

Sweetheart contracts are seldom admitted to by contractors, but out from many sections of the country come charges that local unions often favor local contractors over outsiders, give breaks to specialty contractors that they don't give to generals and occasionally take out their vengeance on individual contractors for real or imagined grievances. A common charge is that local contractors and specialty contractors get better men from the unions, and thus underbid their competition.

The discrimination is not always so subtle. Contractors coming into the Kansas City, Mo., area, for example, claim that they often have to pay more than the rates required of contractors that are members of area organizations with agreements with the local unions. One contractor reports that the operating engineers enforced with a strike a demand for an extra 70 cents an hour. The contractor admits to having capitulated under pressure of the owner (a utility) to get the job moving.

Suggested cures:
- *Separate set of labor laws.*
- *Regional bargaining rules.*
- *Eliminate featherbedding.*
- *Eliminate craft-type unions.*

Outsiders complain that local unions permit local contractors to have laborers unload and handle materials such as forms, electrical conduit, plumbing supplies and even reinforcing steel, while requiring outsiders to do the same work with higher priced men of the trades involved.

The requirement of a teamster union "traffic coordinator" on a job is one that often leads to featherbedding of the worst type.

Many teamsters unions require that any truck arriving at the site driven by a gypsy (nonunion or owner operated) or by a member of a union outside the local jurisdiction must be manned by a member of the local union.

Because truck arrivals are not usually on an accurate schedule, it is not unusual for a contractor simply to give an entire day's pay to the coordinator for each truck that arrives rather than delay deliveries by awaiting arrival of a union driver. In theory, this money is turned over to the union, which in turn distributes it to unemployed drivers.

Keep them out. Another charge commonly aimed at traffic coordinators (and one currently being investigated on several large Eastern jobs) is that they are capable—and often guilty—of influencing a contractor's choice of suppliers and subcontractors. By making it virtually impossible for a contractor-chosen firm to get its trucks onto a job site to load or unload, the coordinator can force a contractor to switch to a supplier or a subcontractor more acceptable to the coordinator or his union.

Suggested cures for the ills of the construction industry are as varied as the men making the suggestions. Among them:

• Have a separate set of labor laws for construction. Construction has been regarded as different enough to be excluded from the Taft-Hartley Act, so it is different enough to warrant special laws. These laws could equalize the bargaining powers of contractors and unions in recognition of the vulnerability of contractors to what they call union blackmail.

• Establish regional bargaining. While a single company and a single union can set the pattern for the entire automobile industry, it is not uncommon for 200 or more contractors in one area to have to bargain collectively or individually with 100 or more separate local unions. The regional concept involving a unified contractor representative group negotiating with a single union representative group is believed by many contractors to be a partial solution to the fractionalization of the industry. But unions and contractors jealously guard their individual prerogatives and often are afraid to trust them to others. Many contractors fear that in a final regional agreement, they would end up with the worst of every union's requirements.

• Abolish the NLRB. This agency was established during a time when "injunction happy courts" were hamstringing union activities. Contractors say that since unions are now accepted—and if anything, favored by the courts—the board has outlived its need for being. They want the right of other citizens to resort directly to the courts for redress against injury suffered as the result of illegal activities (by unions).

• Eliminate punitive shift differentials and penalties for other than normal starting times. In virtually every other industry an eight-hour day can start at any time with no or, at best a minimal, rate increase. In construction many of the tremendously excessive wages stem from work done before or after normal hours even though the total number of hours worked in any given day may be considerably less than eight.

• Delete featherbedding clauses from union contracts.

• Allow unskilled men to do unskilled jobs. Laborers should be permitted to do unskilled work such as loading and unloading trucks by hand, delivering materials and supplies to other, more skilled tradesmen, stripping forms and carrying reinforcing steel from place to place.

• Eliminate the craft-type union, which by its nature results in inefficient use of skilled men and a considerable amount of unnecessary duplication of efforts. The test for full use of labor should be, "If he can do the job, let him."

In spite of the countless suggestions for the correction of the ills of the industry, they all basically come down to one idea—return the management functions of the construction industry to management (see editorial). ■

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The trouble with labor is management

Productivity in construction is so low it is sinful.

Partly because of the craft system and the inefficiencies it has spawned, largely because of the craft unions and the monopolistic power they wield, the fragmented, poorly managed construction industry has by default had itself robbed of its efficiency and robbed also of its right to manage. Contractors are being stolen blind by powerful labor unions; and many of these same contractors see no evil as they pass their losses on to the public and private buyers of construction's products.

Not every construction worker is party to the organized thievery that contrives to extract higher and higher hourly wages for less and less work. At most, 3 million building and construction tradesmen are organized. And not more than 10% of those organized take an active part in establishing union policies. Although every worker, union or nonunion, may need his productivity improved, those who lead in the unions are the culprits.

It's time to break the strangle hold these 300,000 active unionists have on construction.

This is not to suggest union-busting. There's plenty wrong with the craft union system, which perhaps some day should end, but curbs on featherbedding don't demand its destruction. The recent spread of open shop contracting across the south and into some northern states offers a welcome new, third force in the struggle between union contractors and the unions. But those unions are here to stay for the foreseeable future.

Change, if it is to come, will not be brought about by organized labor, however enlightened some of its national leaders have become. Only management can effect real change. The owners or buyers of construction can help. So, too, can the designers of things constructed.

Significant change will come only when the builders and the owners and the designers become sufficiently aroused to organize into the political and bargaining force needed to manage an industry that tightly organized tradesmen and their leaders now can manipulate almost at will.

How bad do things have to get before the outrages of construction labor are ended?

A master mechanic is paid over $90,000 in a single year. Workers legally extort unneeded overtime. Able-bodied unionists collect high pay and even overtime rates for turning machines (or lights) on and off, or simply for watching other men work. Innovative methods or labor-saving tools go unused or disallowed by workmen or their union leaders.

Travel time, clean-up time, show-up time, coffee time and beer-break time all cost—cost the employer and ultimately his customer—the same number of dollars and cents per hour as honest work. And hours don't come cheap in construction. Hourly pay of labor can exceed that of the industry's engineers and managers.

This is not to judge $10 an hour too much for the iron worker high in that skyscraper's frame or the tunneler deep inside some mountain—when they are working. But when nonproductive time is bought at $10 an hour and when work days, work weeks and work rules are manipulated to produce annual earnings two and three or four times factory workers' pay, then things are pretty bad.

Moreover, the relatively high hourly rates in construction and the control unions maintain over both labor supply and hiring combine to bring absolutely criminal labor practices to the industry. Outright acts of extortion, bribery and conspiracy can become cheaper than honesty in the overall scheme of things. Labor peace can be a cost of doing the job, just another cost passed on to an owner. The outrageous work rules contractors have agreed to—at a terrible loss of efficiency and control—can seem mild as compared to some of the hidden and highly improper or illegal costs to which some of them submit.

Fear is a factor. Fear of strikes, fear of slowdown or sabotage. Fear of violence. The stakes are high in this game, and all the players are not necessarily gentlemen.

What needs to be done to correct construction's ills and improve its productivity has been told again and again. The several corrective measures needed are listed once more at the end of this issue's special report:

Construction needs its own, better balanced labor laws. Labor agreements must be stripped of featherbedding and restrictive work rules. Hiring halls need to be run professionally, independent of the unions. Apprenticeship programs and union memberships must be opened up. These are among the long recognized reforms needed to correct construction's labor-management ills.

But the question is not how? It's who? Who will bring reform? Surely not labor, union or nonunion. It's got to be done by management—aroused management, united in political action and in bargaining. The newly concerned and organized private owners can help. (Government agencies are powerless to help so long as their elected leaders need organized labor's support.) And construction's designers can help more than they realize by developing and specifying systems that take field labor out of construction.

A year ago, the Associated General Contractors of America (AGC) seemed poised to launch a drive for labor reform (ENR 3/18/71 p. 55). But the wage stabilization effort began, distracting all in the industry from its chronic and continuing productivity problems. If AGC now would pick up the ball, every industry organization of general and specialty contractors, of consultants and constructors, of engineers and architects, of owners and buyers should get behind an all-out campaign to bring the initiative in labor management back where it belongs in this industry. It's past time for management to reclaim its right to manage, and to exercise it.

Restrictive Work Practices in the Construction Industry
June 20, 1975

The controversy over S. 1479 (Common Situs) and the recent Connell decision by the Supreme Court have both renewed discussion over inhibitions on efficient operations forced upon union contractors by the Building Trades Unions. The heart of the problem is the requirement for skilled men to do semi-skilled or unskilled work. Reflective of this is the decrease in the amount of work performed by laborers on the union job site.

Some examples of restrictive work practices which cross craft linesinclude:

1. Limitation of apprentices to one per five journeymen.

2. Exclusion of helpers in the skilled trades forcing skilled tradesmen to do unskilled work such as cleaning up, unloading trucks and transporting materials.

3. Requirements for nonworking stewards and nonworking foremen.

4. Under the NLRA 8(e) proviso for construction, "preservation of work" prohibitions on prefabricated assemblies and technological advances.

5. Under the NLRA 8(e) proviso for construction, "product boycotts" prohibit the purchase of restricted materials.

6. Under the NLRA 8(e) proviso for construction, "standard agreements" prohibit the use of the lowest responsible bidder.

7. Requirements for minimum crew sizes.

8. Restrictions on output.

9. Requirements for cleanup time.

10. Requirements for time to walk to and from work place (so called "walking time").

11. Showup time.

12. Double time before 8 A.M. and after 4:30 P.M. regardless of hours worked during day or week.

13. Paid time off to vote.

14. Travel time and/or mileage regardless of proximity to home.

15. Premium time for shift work.

16. Quotas of out of town men.

17. Piecework not allowed.

18. Incentive pay not allowed.

Some examples of restrictive work practices that apply to specific trades:

A. MASONS

1. Can't lay brick with both hands.

2. Two men to lift block.

3. Supervise cleaning of bricksaws.

4. No walking above sixth floor.

5. Amount of work performed is controlled by slowest man in crew.

B. CEMENT FINISHER

1. Extra money if calcium used.

2. Straightedge over 6 feet long requires two men.

3. Premium of $.25 to run finishing machine on buildings costing over $500,000.

4. Requirement for one man per every 1000 square feet of slab to finish.

5. Requirement for cement finishers to be present at the start of pouring slab while laborers do pouring.

C. CARPENTERS

1. Build scaffold over 12 feet high.

2. Standby to set screeds for concrete slabs.

3. [illegible]ip beams, some slab and column forms.

4. [illegible]oad trucks with doors, millwork, etc.

5. Do not install prehung or premachined doors, or sash.

6. Must drive all stakes for forms.

7. Must handle any prefabricated forms.

8. Must strip flat slab work if re-usable.

D. LABORERS

1. Standby on gas heaters.

2. Premium pay for tenders.

E. IRONWORKERS

1. Minimum crews on steel erection of six journeymen and a foreman if a derrick is used.

2. Over 10 stories, can not walk to worksite.

3. Installation and transporting of reinforcing rods on grade.

4. Ban on reinforcing rod twirlers.

F. ELECTRICIANS

1. Full day's pay for emergency work.

2. Standby man required on temporary lights used after 4:30 P.M. or before 8 A.M.

3. Unload and distribute materials.

4. Standby when riggers unloading.

5. Standby on generators creating temporary power.

6. Journeyman to install light bulbs.

G. PLUMBERS

1. Employer can only spend one hour per day on the jobsite.

2. Hanger rods and pipe must be cut and threaded on the job.

3. Must cut holes in masonry.

4. Unload and distribute materials.

5. Must install toilet accessories.

6. No preassembled sinks.

7. Standby on heaters.

H. STEAMFITTERS

1. Standby on steam valves.
2. Standby on temporary heat.
3. Hanger rods and pipe four inches and under must be cut and threaded on jobsite.
4. No preassembled boilers.
5. Two men to work on pipe over two inch diameter.

I. OPERATING ENGINEERS

1. Standby required on compressors, electric pumps, fully automatic heaters, steam valves, and "any machine used irrespective of its motive power".
2. Operator required on push button elevators during remodelling.
3. Mason's forklift operator not allowed to load or unload forklift.
4. Assistant (oiler) required on all digging machines.
5. Guaranteed day's pay for two men to move a machine.
6. Master mechanic required if over 6 men employed.

J. PLASTERERS

1. Plastering gun must cease at 3 P.M.
2. Plastering machine work must be hand floated.

K. PAINTERS

1. Limit size of brushes and rollers.
2. Prohibit use of spray machines.

L. AIR CONDITIONING UNITS - PREFABS

1. Must be done by 3 trades.
2. Units are disassembled and reassembled on job site.

SUPPLEMENTARY STATEMENT ON H. R. 5900
PRESENTED BY THE ASSOCIATED BUILDERS
AND CONTRACTORS

In the course of testimony on S. 1479 reference was made to a broad legal suit brought by the Associated Builders and Contractors against building trades unions. The case, which is in various stages of litigation before the National Labor Relations Board, was not, as averred, brought by the association with the intent of harassing the building and construction trade unions. Rather, it was brought as a result of several years continual construction site violence in various parts of the nation.

The ABC, the national Merit Shop construction industry trade association, had many members subject to job site violence of the most ruthless nature, including destruction of construction in place, of substantial equipment, arson, dynamite bombing and personal assault.

The association, intent upon protecting its members against lawlessness that frequently found local law enforcement officials incapable or unwilling to protect fundamental rights of citizens pursuing a common calling, in its suit, filed in May 1973, alleged a national conspiracy of the building trades unions.

In documenting the case for the National Labor Relations Board, the association council declared:

"The most serious and outrageous civil disturbances which have occurred in the United States during the past five years have been initiated, prompted by, caused by, participated in and/or condoned by the building and construction trades unions of the AFL-CIO...These disorders are not isolated as to place or time. They have occurred in many states and with frightening frequency. The purpose in all of them has been the same--the elimination of the compelling force of open shop competition by intimidation and coercion of open shop workers, contractors and construction users who would employ men.

"This chronicle does not pretend to be an exhaustive summary of all that has happened. Practical limitations of expense and time have restricted the investigative effort.[1] Evidence of coercion by violence and property destruction--like the proverbial iceberg--lies largely below the surface.

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[1]Most of the information set forth herein has been gathered from members of Associated Builders & Contractors (ABC) in areas where ABC Chapters exist. Apparently, many incidents have not been reported for any number of reasons. For example, a few ABC members have been afraid to talk for fear of reprisals. Other members, who were apparantely the victims of illicit union activity, did not respond to inquiries for information for other reasons best known to themselves. Finally, it is probable that this brief investigative effort did not reach all ABC members. Also, there was no general effort made to reach all open shop non-ABC members who have encountered difficulties with the building trades unions. No effort has been made to gather information on the scores of secondary boycott and other charges brought against building trades unions. The scope of this effort is limited to coercion and violence against persons and property.

However, when one considers the severe limitations in the investigative effort, the volume and level of restraint and coercion by violent activity is shocking.

"As stated at the outset, an uncomfortably large number of these disorders must be characterized as major civil disturbances or riots. They involve plain and simple mob violence, criminal in nature, carried out in an apparently organized manner in broad daylight by hundreds of men, often under the noses of police, outmanned or otherwise unable to act. Any one of these kinds of disorders, because of its size and the publicity surrounding it, would be significant to intimidate literally thousands of open shop workers, contractors and prospective users of open shop contractors.

"These disorders have been so blatant that it has been necessary in some cases to call out and threaten to call out the National Guard and to mobilize large contingents of riot-trained policemen. Policemen have been attacked and even held hostage until the mob has had its way. There have been countless criminal convictions, injunctions issued by state and federal courts and proceedings before the Board. A number of additional indictments recently have been handed down and grand jury investigations are in progress in various areas of the country. Notwithstanding the possible sanctions which could be imposed and the obvious lawlessness of this conduct, the violence and threats of violence against persons and property all continue."

The statement then proceeded with a documentation of union policies and of numerous incidents that gave rise to the general proceeding.

A tabulation of the incidents in 1973 involved 22 fires, 8 gunshot cases; 24 of violence; 60 of vandalism (21 of expensive equipment); 17 of mass picketing; 8 of bombings and two bomb threats.

In the year of 1974 there were 10 instances of extensive vandalism, 13 of mass picketing and four of arson.

During 1975 to date there have been 11 cases of mass picketing, four of assault, six of extensive destruction property and two of arson. Extensive destruction of property in incidents in some cases rose in excess of $300,000. A tendency toward more extensive destruction has been noticed during this year.

Personal injuries also seem to be on the increase in violence against non-union personnel on job sites.

In the great majority of cases reported, the incidents took place in broad daylight--except for arson. The pattern of police reluctance to get involved in these affairs continues.

This sorry record, we believe, is by no means conclusive so far as the state of the industry is concerned. In fact, we are sure that there are many incidents unreported.

In any case, the record is such that no aggressive intention can be attributed to the ABC and its members. They have been unfortunate victims and they have relied, often futilely upon the law and have not sought to retaliate against the offending parties.

It is quite evident that passage of S. 1479 with its virtual invitation to wholesale picketing of Merit Shop job sites, where union and nonunion men are simultaneously working will multiply the opportunities for violent confrontation.

If nothing else, relating of the situation to the committee, should give rise to misgivings as to the wisdom of the proposed legislation.

June 19, 1975

[From Engineering News-Record, May 15, 1975]

Productivity: a defense against the open shop

The building trades in three areas are working with union contractors to eliminate costly work rules and increase productivity in an effort to combat the open shop.

Last month, the St. Louis Building and Construction Trades Council was on the verge of signing a project agreement with two area union contractors that would have eliminated coffee break, travel pay, standby crews, restrictions on worker output and off-site fabrication and some premium pay for shift work on a $1.8-billion nuclear powerplant.

Before the agreement could be signed, the owner, the Union Electric Co., St. Louis, passed over the two union contractors and awarded the job to Daniel International Corp., a Greenville, S.C., open shop contractor ranked fifth on ENR's list of the Top 400 Largest Construction Contractors (ENR 4/10 p. 50).

The selection of an open shop contractor for the project reflects the utility's displeasure with the building trades' performance on its last two powerplant projects. Explaining the decision, Union Electric president Charles Dougherty said, "We selected Daniel with full recognition of our obligation to our shareholders and our customers that this plant must be built in the most efficient and economic way possible. Daniel understands this, and this means the plant can be built with union labor or without it."

With 1,800 jobs at stake, the council is expected to offer Daniel the same concessions it had planned to give the union firms.

Meanwhile, management and labor in two other states are working to prevent similar losses to the open shop.

The Massachusetts Council of Construction Employers, which represents 26 state employer groups, has secured a "Memorandum of Understanding and Intent" from 17 building trades unions, setting guidelines to be followed in local negotiations. Topics covered in the memorandum range from the elimination of restrictive work practices to the use of maintenance and residential agreements to compete for traditionally open shop work.

In Nevada, the state chapter of the Associated General Contractors and the Northern Nevada Building and Construction Trades Council have set up a joint building trades-AGC committee to explore new ways of settling labor disputes without strikes, increasing productivity and combatting delays.

According to one building trades spokesman, this effort was prompted by the loss of several big area jobs to out-of-state contractors. "We are seeking to improve our productivity to enable local employers to successfully compete for local construction jobs," he says.

[From BUSINESS WEEK, June 2, 1975]

A grudging retreat from work rules

Although it is not yet a major trend, the first strong stirrings of union willingness to modify costly work rules in the construction industry are showing up around the nation. But this is one of the few moderating influences—still regional rather than national—in this year's contract negotiations covering 1-million workers in the building trades.

For the most part, the union pullback on nonproductive, make-work practices is occurring in places where construction unemployment equals or exceeds the national average of 19%, or where nonunion competition is strong. This has been true in southern Florida, Philadelphia, St. Louis, and the Ohio-Pennsylvania border region, among other places.

Disputed trend. The extent of this movement is in dispute. Faced by growing publicity about restrictive practices and worried about a burgeoning open-shop movement (40% of all construction work is now nonunion), top building trades officials tend to offer optimistic assessments of work rules liberalization.

Construction unions relent in areas of high unemployment

"There has been a decided trend in the last two or three years to eliminate the parts of agreements that management says are nonproductive, and I expect this will continue," says Robert A. Georgine, president of the AFL-CIO's Building & Construction Trades Dept.

But a government official who is close to construction bargaining takes a less sanguine view. "I don't see any trend toward easing of work rules," he says. "A lot of unions are demanding they be tightened, and in most cases they are ending up about the same."

"At the least, more restrictive practices are being taken out than are being put in," says Richard F. Kibben, executive director for construction of the New York-based Business Roundtable. "Where there is real, viable open-shop competition, the easing of work rules is a very definite trend."

Attention is now being focused on St. Louis, where construction labor is making what is probably the strongest effort anywhere in the nation to convince rank-and-file workers that they will benefit in the long run by work rules changes. Pipefitters Local 562 started the effort two years ago. But other unions held back, retaining old practices and engaging in strikes that delayed two large power plant projects undertaken by Union Electric Co. on Rush Island south of the city.

Setting the rules. Union Electric responded by canceling two other Rush Island projects, resulting in a loss of $175-million in construction wages. Then, last Apr. 30, UE dropped a bombshell: It selected Daniel International Corp. as the prime contractor for construction of a $1.8-billion nuclear plant near Fulton, Mo.

Daniel, a large national contractor, is well-known as an open-shop employer, though it often employs union labor—if the unions agree to work under rules that Daniel establishes. "In the past," says Union Electric President Charles J. Dougherty, "we've tried to play the game by the unions' rules, and it hasn't worked. Now, we'll set the rules."

The Washington Post

AN INDEPENDENT NEWSPAPER

The Construction Strikes

ANY COMPREHENSIVE APPRAISAL of Greater Washington's preparations for the bicentennial must take into account the serious and mounting damage being inflicted by a lengthy series of strikes in the construction industry here. Not all the damage is being done to projects directly related to next year's celebration; but the duration of these strikes will nonetheless determine, one way or another, the shape this city and surrounding areas will be in next year, and how well they are going to be able to handle the expected swarms of visitors. Already projects critical to an orderly and successful bicentennial observance in the nation's capital have been seriously delayed, so much so that one wonders at the extraordinary lack of any public or official show of serious concern. A succession of disputes between contractors and assorted unions is in its third month. It is disrupting construction activity on private and public projects throughout the area—including work on the Metro subway system, the National Visitor Center at Union Station, the Washington Cathedral, an underground concourse for the National Gallery of Art, the Blue Plains regional sewage treatment plant, the James Madison Memorial Building of the Library of Congress, the new D.C. courthouse, the new D.C. Jail, Dunbar High School and Oxon Run Junior High School. Not only are these and other important projects falling far behind schedule, but in most instances the costs of completion are mounting by the day in the face of inflation.



The current chain of strikes began with roofers and concrete finishers, each of whom has since signed contracts. In sequence came walkouts by operating engineers and heavy construction laborers. By the time these disputes were settled, the building laborers, dump truck drivers and concrete truck drivers had halted work, and they are still out. The issues in these strikes differ, according to participants in negotiation sessions now taking place under the auspices of the Federal Mediation and Conciliation Service. Hiring rules dominate the issues in the strike of building laborers, and the amounts and distribution of money are central issues in the drivers' strikes. As could be expected, there are also differing interpretations by the employers and the unions as to what constitutes any "pattern" in other recent industry contract settlements here.

Certainly in terms of collective bargaining difficulties, these differences—and the efforts to settle them—are not extraordinary. Indeed, there were some hopes last week that settlements might be forthcoming. The trouble is that the circumstances surrounding these strikes are extraordinary, precisely because of their crippling impact on the community's already beleaguered attempt to complete essential services for the bicentennial observance. The progress—or lack of it—in these negotiations, therefore, is not merely a matter of concern to the parties in the dispute; it is a most urgent matter of enormous local and national public significance. And there is an unalternable deadline.

Whatever plans this community may hope to develop for next year—downtown or in the neighborhoods—could be devastated by any further prolongation of the construction standstill. Even now, wherever you drive you are likely to see some project in a state of suspension, with no indication of when work will resume, what additional costs may be involved or whether it may already be out of the question for 1976. At this time next year, Washington could be a full-blown mess—totally incapable of servicing either the hordes of visitors expected or the people who live and work here.

None of this is to say that the unions—or the contractors—should simply capitulate. The concerns of both sides are legitimate items for collective bargaining. But the pressures on both sides to settle—to compromise, to reach agreements that will get Greater Washington moving again—must be stepped up dramatically. Neither the local governments of this region nor Metro and other public agencies are in a position to step into these disputes in any formal way. But this does not mean that Mayor Washington and other area leaders, who have been following the negotiations closely, are not free to impart their concern to the public at large and to the highest levels of the federal government.

In short, the situation is getting more desperate by the day. Federal mediators in the regional office have done their best. Now it is time to bring the full weight of the federal government's Federal Mediation and Conciliation Service to bear on these disputes, through the personal involvement of director W. J. Usery Jr., with the public support of Secretary of Labor John T. Dunlop and President Ford. If the success of Washington's bicentennial is truly important to the administration, President Ford should recognize the emergency that is fast developing in the capital city.

Restrictive labor practices smother productivity

Nothing short of remedial action by the construction industry and, if necessary, by the federal government will root out the inflationary cost pressures exerted by restrictive labor practices.

This conclusion, among others, stems from a recently completed Associated General Contractors (AGC) study of the nature and impact of union work restrictions that show up in jurisdictional disputes, apprenticeship training, building codes and union work rules.

The AGC study traces the pervasiveness of these practices today to the original belief that such restrictions fostered job security and stabilized construction activity. But it claims there is little hard evidence that "they make such a contribution." Moreover, the study contends that the evolution of these practices into counterproductive make-work or featherbedding jobs tends to increase construction costs "above the level that known techniques and inherent productivity would otherwise permit," in effect, sacrificing the industry's growth for purported economic security.

Types of featherbedding. Describing featherbedding specifically as union resistance to better production methods and more efficient machinery, the AGC report codifies current make-work practices into six varieties, the majority of which restrict output and increase cost in some way. These are:

- Limiting the work load an employee may handle or the number of machines he may operate (informal daily limitations on the number of bricks layed or the number of square feet a cement finisher can complete).
- Requiring unnecessary or duplicative work (cement masons that demand finishing by hand trowelling subsequent to machine finishing).
- Requiring unnecessary standby workers or crews or an excessive number of workers (an operating engineer who starts electrical equipment, watches the machine through the day and turns off the machine, usually by pushing a button).
- Prohibiting labor saving tools and machinery (unions that prohibit paint rollers and sprayers or mechanical floor finishing machines).
- Restricting duties of workers or enforcing less efficient working methods or techniques (some highly paid crafts demand jurisdiction over loading and unloading materials).

Other productivity barriers. Supplementing the unions' work rule resistance to cost-saving methods, the AGC says, are a crazy-quilt of building codes based on inflexible specification standards and the unions' control over apprenticeship training and hiring that perpetuates a manpower shortage.

The report also makes clear that many contractors have been unwitting accomplices in strengthening resistance to technological change. Because, it says, any particular restriction may only increase the total cost of a job slightly, contractors have been unwilling to fight hard to bar the practice. Moreover, where a job is subject to a time commitment, builders will try to avoid a costly construction delay whenever possible. Other factors contributing to building trades' resistance, it says, are lack of a major competitive labor force in most areas and mutual union support.

Solutions. While conceding that only new labor legislation governing issues over which unions could bargain might eliminate restrictive practices, the study suggests that AGC members make some effort now to rid labor of its fear of economic insecurity and prevent a further erosion of management prerogatives. These include:

- Adopting, on a national scale, portable pension, health and welfare plans.
- Emulating human relation approaches of open shop builders.
- Eliminating written and unwritten on-site restrictive practices through a unified bargaining approach.

It also suggests that government at all levels help eliminate seasonality by regulating the flow of construction volume, and that the federal government consider using a national stabilization agreement, similar to that used at Cape Kennedy in the early '60s, on federal and federally assisted projects.

Hourly increases during year ending Oct. 1, 1970

(As reported by U. S. Labor Department)

Trade	Wages only Cents	Wages only %	Wages and fringe benefits Cents	Wages and fringe benefits %	Current Rate Levels (Wages only) Average	Average scale (Wages plus fringe benefits)
All trades	64.0	11.6	79.1	12.9	$6.27	$7.08
Bricklayers	66.4	10.9	78.2	11.4	6.76	7.55
Building laborers	54.5	12.8	69.7	14.7	4.84	5.49
Carpenters	66.0	11.4	83.8	12.9	6.52	7.47
Electricians	73.4	11.8	82.3	12.0	7.03	7.77
Painters	53.8	10.1	69.5	12.0	6.04	6.71
Plasterers	62.6	10.8	73.4	11.3	6.48	7.19
Plumbers	79.5	12.7	94.5	12.9	7.12	8.36

Building tradesmen now average $7.08 an hour

Wage and fringe benefit increases for union building trades workers averaged 79.1 cents an hour, or 12.9%, over the year that ended Oct. 1, pushing the average hourly wage-fringe scale to $7.08, according to the Bureau of Labor Statistics (BLS). The average hourly increase for the year before was 54 cents or 9.6%.

The figures are based on the BLS third-quarter survey of seven major trades in 100 cities.

Plumbers chalked up the biggest increase, 95.5 cents an hour. They now top the other trades with an average wage-fringe scale of $8.36 an hour. However, laborers scored the biggest percentage increase, 14.7%, although their average hourly increase of 69.7 cents was second lowest (see table).

Less than 10% of the third-quarter increases were for $1 or more.

On the basis of wages alone, the average over-the-year increase to Oct. 1 was 64 cents an hour, or 11.6%, for all trades. The average wage scale is now $6.27 an hour, and the BLS index of wage rates for union building tradesmen stands at 189.1 (1957-59 = 100).

In computing fringe benefit changes, BLS included only health, welfare, pension and vacation payments. In computing changes in wage rates, it averaged increases in each trade among all workers in the trade, including those that did not receive wage increases.

The CHAIRMAN. We are responsible for changing your schedule, Mr. King. Thank you for staying in Washington and giving us this opportunity to hear you.

STATEMENT OF PAUL KING, EXECUTIVE DIRECTOR, UNITED BUILDERS ASSOCIATION OF CHICAGO, LABOR CHAIRMAN, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

Mr. KING. Mr. Chairman, I do have a lengthy statement that I would like to have entered into the record, and will extract those portions of it that I think are relevant and appropriate this morning.

The CHAIRMAN. Without objection, your full statement will be included in the record, Mr. King. Please proceed.

Mr. KING. Mr. Chairman, members of the committee, staff, and other attendees: my name is Paul King. I am the executive director of the United Builders Association of Chicago and chairman of the labor committee, vice president and an officer on the board of directors of the National Association of Minority Contractors.

I hold membership in various construction committees, and am affiliated with a painting contracting firm. I have served as a special consultant to the Department of Labor, Office of Federal Contract Compliance during 1969 and 1970.

In 1973, I was appointed to the nonunion Construction Advisory Committee on the Cost of Living Council, and was appointed and still serve on the Chicago Construction Coordinating Committee.

I am actively involved in minority builder affairs across the Nation and have been associated with the construction industry since I was 12 years old.

I am here today in my capacity as labor chairman of the National Association of Minority Contractors and more basically, as a black man deeply involved in America's construction industry and its failing health.

You may recall that the last time I appeared here testifying before this committee, it had to do with the nomination of Peter Brennan.

Today it is my responsibility to give a position on Senate bill 1479, a bill which, as written, is intended to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers, with emphasis here on "equal treatment."

To place in context my true feelings and opinions on this bill, I would like to draw your attention to an editorial appearing in the Chicago Sun-Times on July 4, 1975, and its significance is that it was on July 4. The title of that editorial is: "No Escape From Freedom."

It goes on to say:

> One year before its 200th birthday, the United States has undergone a severe test of its maturity.
>
> Currently, the Nation is in a moratorium, a tragic error that began with the assassination of President John F. Kennedy on November 22, 1963, and ended with the resignation of President Richard M. Nixon on August 9, 1974. In a significant sense, the successor to that era has not yet come into being.
>
> Speaking of a different time and different place, Hermann Hesse used words that describe the present state of affairs in this country: "Now there are times when a whole generation is caught between two ages, two modes of life, with the consequence that it loses all power to understand itself and has no standards, no security, and no simple acquiescence."

It is important for Americans to understand that a moratorium is not, by definition, bad. At certain stages in the life of a nation, as in the life of an individual, periods of soul-searching are necessary. During such deep-breathing spells, the nation sorts out its ideas, its values, its commitments, discarding some, retaining others, leaving still others in limbo.

However necessary, these "times between the times" are painful and anxiety producing. "Clear and present dangers" often are easier to cope with than phantom shapes, nameless fears and amorphous longings. After a while it is debilitating to grope for goals that cannot be perceived.

Two temptations must then be avoided.

The first will be the temptation to reduce the pain and relieve the anxiety by declaring this moratorium over before it has run its natural course; sensing that the Nation may have exhausted its capacity to live with ambiguity and uncertainty, politicians may experience an irresistible desire to baptize the new era before it is born.

Just as dangerous will be the temptation to extend the moratorium beyond its time by indulging in what Martin Buber called the "sin of decisionlessness."

"Great debates" over "critical choices" must lead not to merely more great debates, but to critical choices. Otherwise, a frustrated nation may cry out for a leader and be willing to settle for a demagog.

In the 1920's and 1930's, according to the theologian Paul Tillich, the German people, no longer able to bear the anxiety of their national moratorium after World War I, decided that "authority with security" was better than "freedom with fear."

Our hope is that in its bicentennial year, the United States, declining to escape from freedom, will begin to emerge from its moratorium, and with a quickened desire to demonstrate to a doubting world that democratic government is not an idea whose time has come and gone.

This editorial which I have just read provokes in this particular speaker a sense of necessity for us to be more discerning about those actions and decisions we make about the quality of American life.

To many Americans, I am sure, to be "for" this bill is to be for labor—that is, organized labor—and to be "against" it is to, therefore be against or anti-organized labor. So polarized and emotional is this issue that one of the members of our association cautioned me about coming out too vigorously on this issue lest it disturb a contract that we have between the National Association of Minority Contractors and the Department of Labor.

Perhaps if we could abandon our labels as Democrats, Republicans, union leaders, bureaucrats, open shop contractors, Hispanic groups, union contractors, black contractors and, if possible, for a brief moment, consider ourselves as people in America who are involved in the Nation's largest industry and perhaps the future of that industry.

This bill uses the words "equal treatment." How could I, a 10-year veteran in the fight against racism in the industry, be against an "equal treatment" bill?

What I have found is that laws, statements, and Executive orders about "equal treatment"—whether they emanate from the White House or the Senate, are much different in terms of the results they produce for different interest groups.

Witness, for example, that 6 years ago this month, I was out demonstrating, shutting down sites, trying to get more minorities involved in Chicago's construction activities. Yet July 8th's article of the Wall Street Journal indicates that the Department of Labor is still trying to find a way to develop methodology for getting minorities into the construction industry.

Now, I am suggesting that there was a great deal of money spent in plans, a great deal of dialogue carried on, and still, what we have is

no significant involvement in the construction industry by the minority worker, or by the minority contractor.

To go further, we can recall when we heard a President of the United States talking about equal treatment for minority businesseses. and yet the Chicago Reporter, which is attached to my submitted statement, indicates that less than 2 percent of Chicago's construction activity went to minority contractors.

And the Wall Street Journal also ind cates that the Federal Government itself is imbalanced in its awards of contracts to minority businesses.

Now, I am bringing in these statements, not so much to cloud the issue—because clearly this is not a committee hearing intended to deal with minority contractors or minority builders, but what I am trying to bring up here is that there needs to be a correlation between the legislation that is passed and, in my judgment, the capacity it has to be enforced and implemented and acted on in such a way that the legislation was intended.

I personally don't think that we have time to continue to go into the rhetoric of passing laws and debate, and yet, 6, 7, 8 years later, they have provided no solution to the problems that they were intended to address.

When we talk about equal treatment, where is it in this bill that it speaks of the equal treatment for the 40 percent unemployed black youth that will be put out of work due to the increased capacities for work stoppages.

Attorney General Levi, who is from Chicago, has voiced concern about unemployment leading to more crime amongst the young group.

Have we not learned of the danger of making laws that do not represent a full measure of help for all Americans? There have been some excellent statements on this subject—on the House side, presented by Mr. Joseph Debro, a member of our association, and that is also attached here, and I can speak to some of those comments later, if necessary.

However, Mr. Chairman, and members, I think we should address ourselves in some part to Secretary Dunlop's position. I think that on this bill, I think the selection of John Dunlop as Secretary of Labor is a credit to the judgment of President Ford, and one in which the National Association of Minority Contractors has extreme hope.

Hope, as you know, is a rare emotion to be found in the average American in today's too troubled times, and practically an unknown in the minority community. Enough has been written and said, in truth, about Mr. Dunlop's credentials and expertise in labor matters for us to add anything more here.

His role in academia, along with his active participation in public and private labor matters brings to this office a kind of respectable doer-thinker type seldom found willing or able to work in Government service.

National Association of Minority Contractors supports the nomination of Mr. Dunlop; however, we hold these reservations about the unanimity of that support. We know of Mr. Dunlop's specific interest in and contributions to the construction industry. This is a distinct plus, now in our opinion, if we understand the fact that one out of every seven Americans is employed in actual construction on jobs that occur as a result of construction.

Our reservations stem from the concern as to whether Mr. Dunlop can serve a constituency that is not just 84 million people who are employed during good times in the workforce, not only those in organized labor, but also the millions of Americans who are unemployed, underemployed, and more particularly, those who are not even counted in the statistical labor reports because they have given up hope and are no longer identified as seeking jobs.

Clearly these categories of persons need the attention of the new Secretary of Labor. The 41 percent unemployment rate which I mentioned earlier, as stated by James Reston in the New York Times, February 22 edition, is an alarming current problem that has potential for future corollary danger. This portion of his constituency must be viewed by Mr. Dunlop as a priority group for help and attention.

We realize that there are no easy solutions to these problems, and one of the worst things that could happen is for the new Secretary to come up with slogans or suggestions which offer the illusion of hope, but which in fact result in disappointment.

As more and more Americans try to seek to improve the quality of their lives, they are heaping demands on the centers of government—management, labor, minorities, women, veterans, handicapped—everyone is forcing some sort of demand on government.

When you total these demands up, Mr. Chairman, I submit that they overpower the capacity of the Government to deliver. The totality of the demands and needs of many groups are more than the system can accommodate.

Therefore, a prime requisite for Mr. Dunlop's success will be to understand and admit what he cannot do, and what is possible. We intend to propose plans as we go along to help the Secretary.

However, before going too far afield, I would like to impart to you that the National Association of Minority Contractors is the largest organization of minority contractors in this country.

The organization has a noble and simply-stated objective: we seek to improve the condition of minority craftsmen and contractors, and to obtain for nonwhite and other disadvantaged Americans, a fair share of the Nation's construction projects.

I have some supplemental literature about the NAMC that I will submit for the record later.

Speaking directly to some concerns that we have about this bill and the direction to the Secretary of Labor, we do not see in this bill anything that relates to the protection or furtherance of equal treatment for minority workers, such as the concept of goals and timetables for minority hiring, which should continue to have top priority in the Department.

We are concerned about the continuation of funds for manpower training programs and minority-type oriented training in the construction industry, in combination with the Justice Department enforcement where recalcitrance is met.

We are concerned about joint apprenticeship councils across the country being required to integrate, so as to have nonwhite members on both the labor and management sides of the decisionmaking apparatus on apprentices.

We are concerned about making special efforts to communicate OSHA material to the minority community, by using minority contractor associations as the vehicles.

We are concerned about having black construction contractors included on or having direct input in the National Council on Productivity, Construction Industry Stabilization Board, and on other national boards dealing with construction.

We are concerned about allowing construction training and eventual union admission to men lacking high school educations and/or over the so-called apprenticeable age—26 to 30.

We are concerned about the upgrading of nonunion—nonwhite union members in the craft unions.

We are concerned about restructuring the guidelines for manpower training programs so as to make training funds more readily available to minority contractors.

We are concerned that the attempt to include the veterans task group and the handicapped workers group within the OFCC will cause the effectiveness of that agency to be diluted; therefore the National Association of Minority Contractors feels that additional staff is needed, including a deputy director.

At the time these remarks were prepared, there were only 130 people in OFCC monitoring 2,000 Government offices and over 350,000 contracts. It is important that the OFCC Director should have direct contact with his people in the field, and they in turn should report directly to the Secretary of Labor, rather than the Assistant Secretary of Employment Standards.

We feel also that Executive Order 11246, covering minority workers and women should be amended to include minority contractors.

I think also that the Chicago Construction Coordinating Committee, of which I mentioned I was a member, should be continued. They are a strong coordinating effort in Chicago and have resulted in a great deal of discussion and activity on seasonality, productivity, and other things that affect the industry.

I think, in essence, Mr. Chairman, this bill needs amendments before it is passed.

We need to broaden the base of those who will be recipients of this equal treatment sought after in this bill.

We need to give greater protection for the minority worker being victimized by reckless decisions made by the Internal Revenue Service. Many small minority contractors are being padlocked by overzealous revenue officers, thus driving the unemployment rate in the industry even higher.

Now, why do I mention something like that before a committee dealing on labor? I am saying that we have, right now, some reckless IRS people going out padlocking businesses that are hiring people during these depressed times, and driving the unemployment rate higher, even though after I had met with the Commissioner of IRS personally and gotten his commitment to apply less stringent pressures on those small and minority contractors during this time, not to violate the law or give preferential treatment, but in some manner to apply the broad discretionary powers, to alleviate the dismantling of small businesses so that they could remain as employers during times of high unemployment.

And I want to take this opportunity to publicly commend the National IRS Commissioner Alexander for his time and efforts in attempting to alleviate this problem. The Commissioner doesn't

know it, but some of his subordinates in the field displayed no corresponding will to carry out his wishes.

We need equal treatment to allow minority contractors with NAMC to obtain Bureau of Apprenticeship Training certification to allow us to train our people and to employ them, paying them the prevailing wage for the productivity of the work they generate.

We need equal treatment for the Comprehensive Employment Training Act, so as to allow us to use these funds in the training and on-the-job education minority contractors want to give minority persons.

This should be especially attractive to the majority community, which finds it so difficult to hire minorities under the present structure for entry into the crafts.

Until, Mr. Chairman and members of the committee, we can include the broad application of the equal treatment idea in this bill, we must reject it as just another slogan intended to please a few but lacking the content or compelling will to relieve the suffering of the many.

Mr. Chairman, that concludes my remarks, and I would be pleased to answer any questions that the committee feels they would like to put to my attention.

The CHAIRMAN. Very fine statement, Mr. King, profound and one that will be worthy of a lot of thought by this committee.

I was a little uneasy, however, when you said, on page 8, we need little reflection to concede that the total of all the demands of all the special interest groups—management, labor, minorities, women, the elderly, veterans, and so on, are more than the system can accommodate.

That startled me a little; recognizing, of course, that all of the special interest groups that you name do have a special interest to have equal opportunity and a fair shot at life in this country, that cannot be done instantaneously.

When you say, cannot accommodate, I hope that you are suggesting it can not be accommodated in the very short term, and I suggest that is probably what you have in mind, because then you list many, many things that you would suggest in terms of proposals for the new Secretary's attention, for his consideration and support, and every one of them makes a great deal of sense, and has tremendous merit and would lead us to the accommodation of what you call a special interest group.

I suggest that the other minorities—the other special interest groups, rather—are in a similar situation, struggling to find ways for that accommodation.

Mr. KING. What I mean, particularly—I think it deserves clarification.

Most of us that live in this country certainly hope that all the problems that face the residents of this country will be solved.

What I am saying, though—and let's put it in a very mundane and real sense—6 years ago we were asking for minority workers to be admitted into the unions. There was all kind of legislation—not legislation, but there were Executive orders, and all kinds of legislative acknowledgements that this was a good idea.

Now, that was something that I and my group wanted 6 years ago. Now we have a reduction in construction, where there are 2,000 or

3,000 or 4,000 less jobs in Chicago. I know that the system—the construction system, cannot accommodate my wishes for additional minority people at a time when the unemployment rate is so much higher that those that are already entrenched in the industry can't even find work.

So it is in that context of not being able to have as much as you want when you want it, that I am trying to say that the system can not accommodate. Certainly I am not expressing hopelessness in America in that statement.

The CHAIRMAN. Well, I am glad you amplified it. Certainly economic recession stifles opportunity for everybody. We sit here as a subcommittee of the Labor and Public Welfare Committee, and our mission in life is to find ways for the groups you mention to find full accommodation in the opportunities of this country.

On my left is Senator Jennings Randolph, who is chairman of a Subcommittee on the Handicapped, and I will tell you he has found so many ways to advance the better life of handicapped people through his subcommittee, and one of our most basic propositions—that educational opportunity is the foundation for a full life in this country—we have a significant bill submitted by Senator Randolph just recently, and we trust that it will be law before long. It will be more of a promise of reaility of equal opportunity in education for the handicapped youngsters.

So it is a struggle all the way through, and there will be setbacks. The economic recession certainly is a major setback on many of these opportunities.

But your enumeration of the things that can be done is outstanding.

Mr. KING. You see, my concern is that while we have everyone else in America recognizing that sacrifices must be made, that the unions and those people that have powerful positions within industry also recognize that sacrifies must be made, and they may not be able to have all they want when they want it, and it is in that sense——

You see, we operate—and if you can refer to Mr. Debro's statement, on page 7–A, we have a significant kind of problem, those of us in the minority construction community.

First of all, by being minorities, we suffer from the racism that has not completely been annihilated over the years, even though you and many other good constituents on the Hill would like to see that go; we simply still suffer from that.

Besides that, we lack the opportunity to get into the crafts; we lack the opportunity to get funds to train our people, and we lack the economic requirements that it takes to be good contractors; that is, financing, bonding, and all the other things.

So when we come and speak to a bill like this, what we have to bring to your attention is that if organized labor is deserving of special attention, so as to give its equal treatment needs some redress, then I think this bill ought to consider what damage this law might do to us as a group, and also how, perhaps, the needs of one group can be gotten with the dismantling or demise of another group.

And you know, unlike the previous testimony of the large associations, AGC, ABC, and others—I mean, we are a group that is struggling for survival right now, and when you have increased job stoppages, because perhaps one of our members is not a union contractor,

that is going to drive the unemployment rate of those 41 percent black youths, that we could hire some of, up higher; it's going to probably stop the large white contractors who have previously not wanted to hire us; it is going to give them a reason now to say, because we've got a problem with the union, we are not going to let you have this contract.

So we have some very deep concerns about a bill giving greater ammunition to those people that want to wipe us out anyway.

Senator RANDOLPH. Mr. King, while the chairman is conferring with his staff, at the beginning of your statement, you spoke about the Bicentennial of the country, and only for purpose of indicating that sometimes minorities of one type or another are able to accomplish that which the majorities are not able to accomplish, because they are able to focus attention on their needs in a way that an appeal can be understood, or a cause can be created beyond the minority that espouses that cause.

The reason I mention the 200th anniversary, to which you have made reference, is that George Washington, we must remember, was working with a minority—not in England, but within America—when he and other patriots of that earlier period wanted to establish for this country a republic which would be free of colonization under Great Britain.

History documents that only about one-third of the people living here believed we should found a new nation. There were perhaps an equal one-third who believed that we should remain under British rule, and then there were perhaps a third of the people who had no feeling one way or the other.

And so Washington and other leaders of that day, in the determination to bring into being a new government here, were actually operating as a minority—supported perhaps only by one-third, balanced against the one-third against, and the one-third apathetic—it was a minority, thinking that this could be done.

And that is so strikingly set forth, time and time again; George Washington, in the dark hours when—at the conclusion of the year of 1776, December of that year, found that his forces which had enlisted for 1 year—that that manpower, understandably, wanted to go home. And so his forces, at a time when, really, we were to go one way or the other in winning or losing, were moving away from the job that they had to do.

And it was in such a predicament that he appealed for 1,000 volunteers to come and take the places of those who had enlisted but were leaving his command. And instead of the 1,000, Mr. King, there were only 100 who answered that appeal, and yet General Washington stayed on the job, and regardless of positive events which seemed to shape that period—the crossing of the Delaware, and certain victories which could lead to beginning a Republic, why, he was a man who was working with a minority.

And yet he kept at it and at it and at it, and it was so even during the Continental Congress—when it seemed that there would not be sufficient number of signatories to do the job of creating a nation.

Now, the only reason I mention this is because of your statement, has been supplemented by comment of the chairman, that we must not become disillusioned, even though there is every reason, often, for frustration.

I think that is basic to what we are all thinking. I offered the 18-, 19-, and 20-year-old voting legislation in the House of Representatives in the Congress in 1942, and I felt at that time that it would really be just a short time until what had been done in Georgia in that year became Federal law as well.

It was not so, and years and years went by. I am not trying to actually say the cause was right or wrong, but I believe that those persons of 18, 19, and 20 should be participating in their responsibilities, and it was not until 1971, after, frankly, I had continued on 11 occasions to present such legislation, that it actually was written into the law, and passed by two-thirds of the bodies of the Congress, and then referred to the States.

And Mr. King, after all of those years, from 1942 to 1971—you know, it came into being rather quickly, but it had to be as a process of continual struggle. The ratification by the States took place in 90 days.

Mr. KING. I think the key, though, to the fact that that struggle was able to go on that long and was able to be accomplished, was the fact that you and some of your supporters survived to continue to lead that struggle, just the very same way that George Washington survived long enough to muster a group big enough to carry on against maybe a majority will not included in what his will or the minority will was.

In my case, or the case that I espouse, I am concerned about survival in a real sense. Senator Randolph, it is real that in a city like Chicago, the unemployment rate is in some way connected with crime, and crime is such that people have a quality of life where they don't know whether they are going to be alive the next day or not.

I am telling you that there were CETA funds given to cities across this country, and unless the unions approved the distribution of those CETA funds, no training can be done for construction.

I am telling you that black youth who would desire to learn construction so they wouldn't be in jail, breaking windows, would be installed as glaziers—they would be glad to do that. But we can't get any construction curriculums coordinated, because we cannot get BAT, we cannot get all the political unions to appreciate our position.

Now, I certainly admire your stand and tenacity—your staying power and tenacity in getting something that you believe in done. I would hope that history—or someone—could say that about me and my group.

But what I am saying now is that I am seeing such a level of misery and—decay in our communities around the country, and the very unions that we are seeking here to give equal treatment to are the obstacles in our getting some of it done. They are in the cities that will never be rebuilt; at $15–$16 an hour, it will never—it just can't be done, and I am saying, if we have young people that can coordinate that with a school education, that might be a way to motivate them into some kind of a career that has also some application to rebuilding our environment.

I am just saying that there are too many obstacles coming from this group here—the builder which is seeking equal treatment, and we need equal treatment for all before even our group can really get behind this bill, and I am trying just to bring these thoughts to Senators of your type, because I do know of your concern for all Americans.

Senator RANDOLPH. Mr. King, the reason I introduced the comment that I did was because of your opening statement about the Founding Fathers, and the comment of the chairman that we have to keep working, as you are working, toward the realization of our goals and our beliefs and our dreams.

All of this is a part of life; there was a time in this country when we had no vocational or technical schools, except some that were privately operated. But we have them now, all over the country; we have the vocational and educational programs, where the black students as well as the white students are being taught trades.

Mr. KING. Untrue in Chicago, Mr. Senator; untrue in Chicago. I mean, I'm sorry to interrupt you like this, but in Chicago, you can not teach a youngster and get him endentured into the trades without going through a vocational school that is controlled by the unions, and they discriminate, and have discriminated against minority youth in getting them in there, and I can document this for the committee.

And I think that even the State has taken money away from this schooling, because it has been proven that discrimination is taking place.

I didn't mean to interrupt so vocally, but you should know this. A lot of these things in the local communities you certainly can't know up here on the Hill, but that is a fact. These vocational schools around the country are not consistently teaching minority youngsters how to get involved into the trades, and how to get involved into those crafts that are going to have some longevity.

I mean, there is a place for women in construction crafts, especially insofar as it goes with estimating, and those other things—shop drawings. There is no availability of that kind of thing for minorities in these trade schools, not the way it should be.

Senator RANDOLPH. Well, I am sort of a third party, Mr. Chairman, in the discussion, except to say to you, Mr. King, that I am gratified that West Virginia, in this instance, is not Chicago, and that our program of vocational and technical training does not have that stigma attached to it.

Everyone has the opportunity as a part of a school curriculum, to go into the programs that I have mentioned. Also, at nighttime, after the regular work of the day, we have the programs for adult training, because of the need for persons in certain types of employment—those persons who are unemployed are given the opportunity to learn that work, that they may take jobs which are available, and so not only for youth, but for adults, education in the vocations, in the technical programs—there is thus opportunity in our State.

I may at this point—I'm not certain—document some of what our programs are, Mr. Chairman, and what the results have been.

I only feel, Mr. King, that we must make every effort, of course, to administer the law, whatever the law may be, in accordance with the intent of the Congress. The intent of the law must not be subverted by a Federal agency at any political level. The intent of the law must not be carried out other than as the Congress passed it, as the law is set forth, and when this does not take place, as you have indicated, in Chicago, why, it is a matter, Mr. Chairman, that the appropriate committees, or some committee, can well look into.

You bring it to our attention, and it could be that our Subcommittee on Manpower, or our Subcommittee on Education could do so—there might be a reason, Mr. Chairman, for further looking at what Mr. King has indicated he believes to be prevalent in his city.

The CHAIRMAN. I just wanted to point out one thing that is in our bill, that I don't know whether you made any reference to or not, Mr. King. It is the proviso:

> Provided further that nothing in the above proviso shall be construed to authorize picketing, threatening to picket, or causing to be picketed any employer where an object thereof is the removal or exclusion from the site of any employee on the ground of race, creed, color or national origin.

Did you make any reference to that at all?

Mr. KING. I read that in the proviso. Of course, that is in the laws that are on the books right now, but we still don't have——

The CHAIRMAN. You suggested that you saw a threat to you, a minority contractor, in this legislation. I see in that provision what I consider to be protection from that—for your situation as a minority contractor.

Mr. KING. Well, I know you have another person to give testimony, Mr. Chairman, and I know the hour is growing late.

The CHAIRMAN. I just wanted to make that point.

Mr. KING. I don't see protection, because it is a statement about what should happen, and I have not seen that protection manifested in terms of what does happen, and that is not an error, or some suspicion that I have toward you or your committee.

The CHAIRMAN. I think you are referring to other areas and applying it to this situation. I am limiting my observations to this particular situation, and I see protection for you in that section.

Now, I will say finally that you said you would like to bring the following proposals to the new Secretary's attention. Have you brought these proposals to the Secretary's attention?

Mr. KING. I was actually waiting until I heard his testimony yesterday.

The CHAIRMAN. Well, I think that you should, and we would like to join you in that very constructive effort.

Mr. KING. Thank you very much.

The CHAIRMAN. Thank you very much, sir.

[The prepared statement of Mr. King with attachments follows:]

STATEMENT BY

PAUL KING

Executive Director, United Builders Association of Chicago.

Labor Chairman, National Association of Minority Contractors

To:

The United States Senate Committee on Labor and Public Welfare

Re: SENATE BILL 1479
July 10, 1975

Mr. Chairman, members of the Committee, staff and other attendees. My name is Paul King. I am the Executive Director of the United Builders Association of Chicago, Chairman of the Labor Committee, Vice President and an officer on the Board of Directors of the National Association of Minority Contractors; I hold membership on the Construction Subcommittee of the Minority Business Opportunity Committee, and the United Builders' Liaison Committee with the Builders' Association of Chicago, and am affiliated with a painting contracting firm.

I have served as a special consultant to the Department of Labors' Office of Federal Contract Compliance during 1969 and 1970. In 1973 I was appointed to the non-union Construction Advisory Committee of the Cost of Living Council and was appointed and still serve on the Chicago Construction Coordinating Committee. I am actively involved in minority Builder Affairs across the nation and have been associated with the construction industry since I was twelve years old.

I am here today in my capacity as Labor Chairman of the National Association of Minority Contractors, and Executive Director of the United Builders Association of Chicago, and more basically as a Black man deeply involved in America's construction industry and its failing health.

You may recall that the last time I appeared before this August body was in January, 1973, at which time the subject

was the Nomination of Peter Brennan as Secretary of Labor. Today it is my responsibility to give a position on Senate Bill S 1479, a bill which as written is intended "to protect the economic rights of labor in the Building and Construction Industry by providing for equal treatment of craft and industrial workers:.

To place in context my true feelings and opinions on this bill, I would like to draw your attention to an editorial appearing in The Chicago Sun-Times on July 4, 1975.

"No escape from freedom"

One year before its 200th birthday, the United States is undergoing a severe test of its maturity.

Currently, the nation is in a moratorium. A tragic era that began with the assassination of President John R. Kennedy on November 22, 1963, ended with the resignation of President Richard M. Nixon on August 9, 1974. In a significant sense, the successor to that era has not yet come into being.

Speaking of a different time and place, Hermann Hesse used words that describe the present state of affairs in this country: "Now there are times when a whole generation is caught...between two ages, two modes of life, with the consequence that it loses all power to understand itself and has no standards, no security, no simple acquiescence."

It's important for Americans to understand that a moratorium is not, by definition bad. At certain stages in

the life of a nation, as in the life of an individual, periods of soul-searching are necessary. During such deep breathing spells, a nation sorts out its ideas, its values, its commitments-discarding some, retaining others, leaving still others in limbo.

However necessary, these "times between the times" are painful and anxiety-producing. "Clear and present dangers" often are easier to cope with than phantom shapes, nameless fears and amorphous longings. After a while, it's debilitating to grope for goals that cannot be perceived.

Two temptations must then be avoided.

The first will be the temptation to reduce the pain and relieve the anxiety by declaring the moratorium over before it has run its natural course. Sensing that the nation may have exhausted its capacity to live with ambiguity and uncertainty, politicans may experience an irresistible desire to baptize the new era before it is born.

Just as dangerous will be the temptation to extend the moratorium beyond its time by indulging in what Martin Buber called the "sin of decionlessness." "Great debates" over "critical choices" must lead, not to more great debates, but to critical choices. Otherwise, a frustrated nation may cry out for a leader and be willing to settle for a demagog.

In the 1920s and 1930s, according to the theologian Paul Tillich, the German people, no longer able to bear the anxiety of their national moratorium after World War I, decided that "authority with security" was better than "freedom with fear."

Our hope is that in its Bicentennial year the United States, declining to "escape from freedom," will begin to emerge from its moratorium - and with a quickened desire to demonstrate to a doubting world that democratic government is not an idea whose time has come and gone.

This editorial provokes in this speaker a sense of necessity for us to be more discerning about these actions and decisions we make about the quality of American Life.

To many Americans, I am sure that to be "for" this bill is to be "for" Labor (organized) and to be "against" it is to, therefore, be anti-organized labor. So polarized and emotional is this issue that one of our members cautioned me about coming out too vigorous on this issue less it disturb a contract National Association of Minority Contractors has with the Department of Labor. I know the integrity of the Secretary of Labor and Robert McKonnen are not vindictive toward people or groups which oppose them.

Perhaps if we could abandon our labels as Democrats, Republicans, Union leaders, Bureaucrats, Open Shop Contractors, Hispanic groups,

Union Contractors, Black Contractors, and if possible... for a brief moment...consider ourselves as People in America who are involved in the nation's largest industry and perhaps the future of that industry.

This bill uses the words "EQUAL TREATMENT". How could I, a ten year veteran in the fight against racism in the industry be against an "equal treatment" Bill. What I have found is that Laws, Statements and executive orders about "EQUAL TREATMENT" are much different in terms of the results they produce for different interest groups.

Witness for example, that exactly six years ago this month we were demonstrating for greater minority workers into the industry. Yet the Wall Street Journal, Tuesday, July 8th, reports new "Propositions."

4 THE WALL STREET JOURNAL,
Tuesday, July 8, 1975

U.S. Proposes New Minority-Hiring Plan For Construction Trades on Federal Jobs

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON—The Labor Department drafted a new approach to the thorny problem of gauging minority-group participation in the construction trades.

The department proposed that contractors on federal projects in Philadelphia and New York City base their hiring goals for minority workers on a new formula related to the minority population in each area.

If adopted, the proposal in some instances would increase the number of hours minorities in those cities are expected to work on federally financed projects; in other cases, the new goals don't meet present utilization of minority workers. Nonetheless, the proposals reflect a formula recently endorsed by a federal appeals court in New York as a way to measure minority hiring.

The department has struggled for months to produce new hiring plans for construction projects policed by the Office of Federal Contract Compliance. The Philadelphia plan, originally imposed by the government in 1967, has been revised and extended several times and most recently expired June 30. The department had hoped that labor, management and minority groups in the community would establish a new voluntary plan, but negotiations haven't succeeded.

The voluntary New York plan, originaly approved in 1971, has gone through similr extensions as well as several legal challenges. Last November, the Departmet made federal construction work in the city subject to mandatory goals in minority hiring. That order expired July 1.

The new Philadelphia plan covers 23 construction crafts instead of the six crafts currently under the plan. It also covers all federally assisted contracts and subcontracts exceeding $10,000 instead of the previous standard affecting contracts on projects of more than $500,000.

The key change, however, adopts as a goal for hours worked by minorities on construction projects a percentage equal to the percentage of minority males over 18 years in the labor-force area with four years of high school or less. On that basis, the goal for the Philadelphia area is 22%, to be achieved by the year ending June 30, 1978. The goal for the current year is 19% to 20%, depending on the trade involved.

The New York plan sets current goals at 23% to 32%, depending on the trade, and reaching 33% for all trades by June 30, 1978. Contractors who fail to meet the hiring goal aren't automatically found to have violated the rules but are expecetd to show they've made "a good faith effort" to meet the goals.

The department set an Aug. 6 deadline for public comment on the proposals.

Other cities presumably could come under the same formula as present plans expire. However, Labor Secretary John Dunlop currently is reviewing the entire operation of the department's contract-compliance program and could suggest a different approach in the future.

We heard a President talk of equal treatment for Minority Business yet The Chicago Reporter shows the Blacks and Browns participated in less than 2% of that six county area's construction dollar spending, and an article in the Wall Street Journal, June 11, 1975, states "Federal Contracts To Minority Firms Termed Imbalanced".

Note: Some statements attributed to me in The Chicago Reporter were taken out of context. Certainly the Mayor of Chicago and Erwin France, Model Cities Director have given strong support thru technical assistance for Minority Contractors, and of course, all expletives, attributed to me should be deleted.

The Chicago Reporter

A monthly information service on racial issues in metropolitan Chicago

Volume 3, Number 10
October 1974

Biz a Bust

Bonding Barriers Break Black Builder's Back

As befits the construction industry, the barriers to minority entrepreneurs are well-built, durable and intricate. One stumbling block dovetails into another, keeping newcomers out. Legal restrictions, financial requirements and uncertainties over payment schedules form a maze of obstacles.

"The construction industry is a rigid set of procedures and guidelines," says



Paul J. King

Paul J. King, executive director of United Builders Association, a black Chicago contractors' organization. "It is very difficult to interweave social experimentation into such an inflexible framework."

By invitation or newspaper ads, potential bidders are notified that bids are being solicited for specified contracts. On a designated date, the sealed bids are opened and the contract is awarded to the lowest qualified bidder.

Bids must be accompanied by a cash deposit equaling five to 10 per cent of the contract's total dollar amount. A contract estimated at $500,000 requires up to a $50,000 deposit. The bid deposit serves

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Winners and Losers

Big Builders Cop Public Construction Contracts; Suburban Firms Corner Market; Blacks, Latinos Left Out

Government may be the last of the big-time builders, but minority contractors have yet to make it big in public construction. In fact, most haven't made it at all.

The private sector of the building industry in Cook County is in an economic tailspin, tumbling 27 per cent from a year ago, but public construction continues to climb, up 25 per cent over last year.

Nailed to the Cross

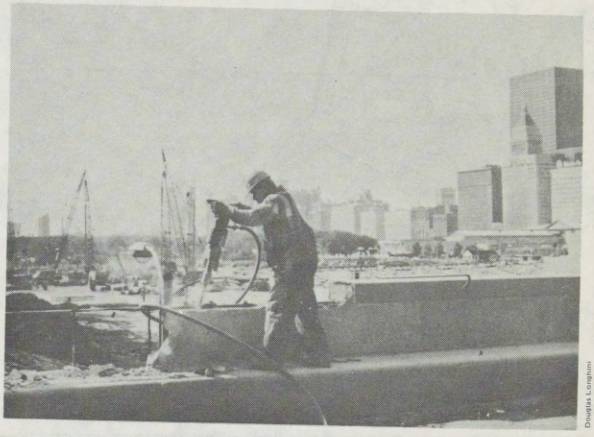
In Chicago alone, industry experts estimate that public projects will account for almost half of all construction completed in the city this year. Yet public contracts remain beyond the grasp of most black and Latino construction contractors.

Since 1972, six governmental agencies – the City of Chicago, Chicago Park District, Public Building Commission (PBC), Board of Education, Metropolitan Sanitary District and Cook County – spent close to half a billion dollars on construction, enough money to build three Sears Towers.

The Chicago Reporter, examining more than 3,600 construction contracts let from January, 1972 to June, 1974 by these six agencies, found minority contractors received $6.7 million, or less than two per cent of the total $472.7 million committed during that period. For every one hundred dollars the six agencies spent on construction, black contractors received $1.23 and Latinos 18 cents.

Minority contractors were most successful in getting contracts from the PBC (See Table page 3). Minority participation ranged from a high of 2.1 per cent on PBC work to zero on jobs sponsored by the County, which let $62 million in construction contracts since 1972.

Cook County is the stingiest agency from the minority contractor's point of view but the Sanitary District and the Chicago Park District are little better. The Sanitary District spent $58 million on construction in the two-and-one-half year period, but only $269,695, or 0.5 per cent of that went to minority contractors. Similarly, the Park District spent



Douglas Longhini

$25 million during this period and only 0.2 per cent went to minority contractors.

Purchasing agents for these three agencies are quick to say that their hands are tied. Statutory restrictions, they say, prohibit the agencies from giving minority and other small contractors a lift up. One purchasing officer admitted there is confusion. "I don't know what I am doing. The state people tell me one thing, the federal government another. There are no guidelines. What am I supposed to do?" he asks.

The Minority Contractor Assistance Project, a federally funded trade group, estimates that 55 cents of each construction dollar remains in the minority community when a minority contractor is used, compared to only five cents when the contractor is white. This estimate is a rough rule of thumb, but there is no doubt that Chicago's black and Latino communities are losing millions of dollars in wages and other income generated by public construction.

By state law, all public contracts exceeding $2,500 must be awarded to the lowest bidder. In practice, however, the law only applies half the time, because general contractors control at least 50 per cent of all contracts let by the six agencies.

Once a contract is awarded to a general contractor, all low bid requirements can be dropped, and the general selects the subcontractors for the job. It is to his advantage to opt for those subcontractors who will perform the work at the lowest price, but general contractors also respond to other considerations.

Peace and Quiet

"The white contractor feels he damn well better get minority subcontractors on his job when the work is in a minority area, or he is likely to be shut down," says Paul King, executive director of United Builders, the largest association of minority contractors in Chicago. "It's protection for him. We can offer the white contractor peace and quiet on the job."

On larger jobs, the small minority contractor deals almost exclusively with white general contractors. The Reporter found only one contract let by the six agencies is controlled by a black general contractor. And that contractor, Charles Moore, hired only one minority subcontractor. Seventy-eight per cent of the work by minority firms for the six public agencies was let by white general contractors.

"Most jobs between white generals and minority subs are negotiated in some way," Paul King says. He calculates that without "exercising pressure," minority contractors would be able to capture only a tenth of the contracts they now get through general contractors. Fear and the threat of a job shut down may be the minority contractor's only means of getting contracts, but it's a sloppy way to do business. Too many contracts get away.

The Reporter found that the six agencies let at least $179 million in construction in black and Latino communities since 1972. But only three per cent of this work went to the minority contractors. Furthermore, half the construction dollars spent in Chicago's inner city eventually flee to the suburbs.

The Reporter discovered that suburban contractors performed $75 million, or 44 per cent of the construction in minority neighborhoods. This $75 million controlled by suburban companies is 13.7 times the dollar amount in contracts received by all the minority contractors in their own neighborhoods. "They (suburban contractors) are bleeding us to death," cries one city official.

The slump in new housing construction in the suburbs prods suburban contractors to return to the city and swarm on public work. The four agencies which work exclusively in the city – the City, Park District, PBC and Board of Education – awarded $165 million, or 46.9 per cent of their contracts to suburban companies, since 1972. (See chart, left)

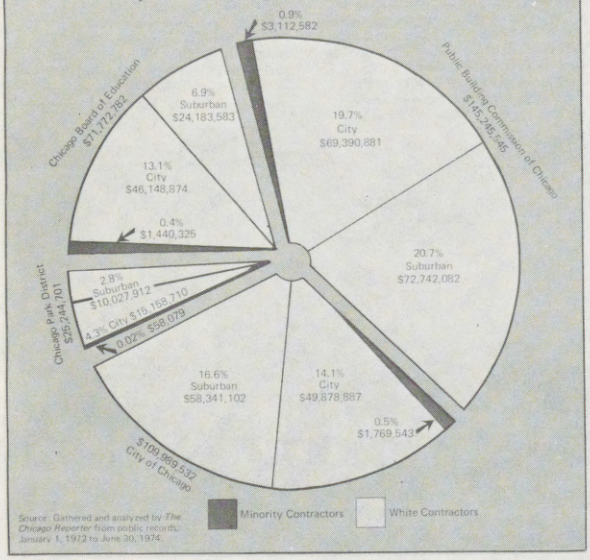
Not only do minority contractors get little public work from the six agencies in their own communities, they are virtually shut off from any contracts on projects outside minority neighborhoods. They are locked in the inner city. "With the economy sliding down, and private construction leading the way, you just try to introduce a minority contractor into a white neighborhood!" exclaims one public official. Minority contractors performed 0.2 per cent of the $294 million in contracts let by the six agencies outside minority neighborhoods.

Community pressure cannot be bussed across town. For example, of the $20 million the city has invested in new construction at O'Hare since 1972 only one contract for $2,500 has gone to a minority company.

An incentive program developed by the city and now in limited use on two projects in black neighborhoods, however, may signal the breakout of minority contractors from the inner city.

The program is a formula whereby a general contractor is credited with a lower bid on a contract than his actual dollar

Construction Contracts Awarded to Minority and White Contractors by Four Chicago Agencies, 1972 to 1974



Source: Gathered and analyzed by *The Chicago Reporter* from public records, January 1, 1972 to June 30, 1974.

Graphics by John A. Roberts

bid by promising to hire a certain number of minority workers. The more workers pledged, the greater the credit. Although directed at hiring, the credit formula promotes the use of minority subcontractors. By letting subcontracts to minority companies, the general contractor has an easier time meeting his agreed upon minority workforce.

To date the credit formula is used only in the inner city. But city officials say they are planning to use it in the near future on a contract in the Beverly area. These officials point out that this will be the first time the formula is applied outside a minority community. Beverly is a predominantly white neighborhood on the border of an all black area on the southwest side.

The idea of applying the credit formula citywide has, says one city official, "been shoved down the Mayor's throat, but so far he is not swallowing it."

The formula is gingerly applied on certain types of work. It has never been used on contracts for road, sidewalk, and bridge work although these account for almost 62 per cent of the city's capital improvement budget.

PBC has adopted the program for some of its future work, but other agencies balk at the idea of tampering with the bidding procedure.

Edward Mulville, the County's purchasing agent, thinks the credit formula is illegal. This view is shared by John W. Rogers, black Sanitary District trustee. Five years ago, however, Robert L. Tucker, also a black attorney, then Assistant Regional Administrator for HUD, said a credit formula was "absolutely necessary if equal opportunity objectives are to be achieved."

Minority contractor participation has been as high as 45 per cent at the King Community Service Center at 45th and King Drive. On this project and the Carter G. Woodson library, on the far South Side, minorities make up 77 per cent of the construction workforce. These are the two jobs, to date, on which the credit formula is used. However, there are some loopholes in the formula, according to Norman Graves, the project manager at the Woodson library.

Dwortz and Sons Construction Co., which is doing the ventilating work at the library, is credited with a 50 per cent minority workforce. Dwortz has one black and one white worker installing the ventilating equipment at the job site. The equipment, however, is assembled at Dwortz's shop where the workforce of



Ramon F. Casals

Norman Graves and construction worker

about 18 is completely white, Graves says. City officials argue there is no way to police this kind of employe juggling.

With or without the credit program, minority contractors end up in only a few trades. Plastering, painting, and tiling accounted for 40 per cent of *all* contracts minority companies received, and 35 per cent obtained through general contractors. Yet, only one of every 15 minority contractors is engaged in these crafts.

There are four trades which received $9 million in contracts in which minority contractors were awarded nothing. (See Table, page 8) General contractors usually retained the $14.7 million in contracts for concrete and carpentry work.

Electrical Work Short Circuited

Such trades as roofing and sheet metal, and glazing are strongly controlled by white unions. But union control is tightest in the mechanical trades (heating, plumbing, masonry and electrical).

A mechanical contractor cannot work in Chicago without a license. City officials say the prerequisite for a mechanical contractor's license is completion of an approved apprenticeship program in a mechanical union.

There has been at least $129.9 million in mechanical work let by the six agencies since 1972, but less than two per cent went to minority contractors even though 35 per cent of all minority contractors are in the mechanical trades. Minority contractors charge, however, that the unions have a strangehold on which contractors will be licensed.

By checking licensing records at the city's Board of Examiners and the Building Department, the Reporter found that more than half the minority contractors actively engaged in the mechanical trades are not licensed to perform mechanical work in Chicago. These contractors are forced to work underground, either by using another's license, or by working on jobs without building permits.

One unlicensed minority contractor tells the Reporter that he must pay off city inspectors when working in Chicago. Although a mechanical engineer himself, he has never passed the city's licensing test in his mechanical trade. He has passed tests in two nearby suburbs, he says.

"If a contractor is operating without a license, and knows his business well

Minority Contractor Participation In Chicago Area Public Construction

	Board of Education	City of Chicago	Cook County	Sanitary District	Park District	Public Building Commission	Six Agency Total
Total Contracts	$71,772,782	$109,989,523	$62,476,488	$58,045,913	$25,244,701	$145,245,545	$472,774,952
Total Minority	1,440,325	1,769,543	0	269,695	58,079	3,112,528	6,650,170
Per cent	2.00	1.61	0	0.46	0.23	2.14	1.41
Black	1,411,392	1,468,055	0	269,695	58,079	2,608,633	5,815,854
Per cent	1.96	1.33	0	0.46	0.23	1.79	1.23
Latino	28,933	301,488	0	0	0	503,895	834,316
Per cent	0.04	0.28	0	0	0	0.35	0.18
Prime Minority Contracts	731,581	170,251	0	7,695	13,050	510,772	1,433,349
Per cent	1.02	0.16	0	0.01	0.05	0.35	0.30
Minority Subcontracts	708,744	1,599,292	0	262,000	45,029	2,601,756	5,216,821
Per cent	0.98	1.45	0	0.45	0.18	1.79	1.11

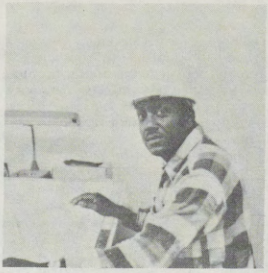
Source: Gathered and analyzed by *The Chicago Reporter* from public records, January 1, 1972 to June 30, 1974.

enough to keep on doing work, there must be something wrong with the testing for licenses," says King.

"There is a certain hypocrisy in the city's response," says King. Since the first weeks in July when the Reporter checked with the Board of Examiners, on the status of minority mechanical contractors, the city has known that more than half of these contractors are unlicensed.

Bottoms Up

King asks, "Why doesn't the city take some affirmative steps to license these contractors like running seminars or intervening with the unions?" He answers:



Ramón F. Casas

James P. Crossley

"No one in the city will get up off their asses and do that, because there is no public will to help minorities participate."

If Paul King could get some officials on their feet, he would like to see affirmative action officers march on some veteran road and sewer builders.

Public construction is top heavy with road, bridge, sidewalk and sewer work. All of this work is sponsored by three of the six agencies. The City, County and Sanitary District since 1972 spent $145.3 million pouring concrete, laying asphalt and repairing bridges.

Of the $145.3 million spent on road, sewer, sidewalk and bridge work, $104.3 million or 72 per cent is controlled by 10 construction firms. They are unquestionably the barons of public construction in Chicago. (See page 8)

Altogether minority contractors received $6.7 million from the six agencies since 1972. Yet nine of these large construction firms each individually controlled more contract dollars than were awarded to all the minority construction companies combined.

In fact, Brighton/Western, Paschen and Jay Dee construction companies, each controlled twice as many contracts (again measured in dollars) as were awarded to all minority contractors.

The City and County sponsored $61.5 million in road work since 1972. None of these contracts went to minority companies.

"Even if a public agency offered minority contractors the Dan Ryan from 31st to 95th street," says King, "I could not put my hands on a minority contractor in northern Illinois to do the work." There are no minority roadbuilders in this part of the state.

The average road contract is priced at more than $800,000. Orlando Dixon, of Breadbasket Commercial, says a roadbuilder needs between $200,000 and $300,000 in cash just to lease or purchase the heavy equipment. Few small or minority contractors have that kind of operating money.

Principal Contractors of Five Governmental Agencies

City of Chicago		
5 contractors were awarded 85 per cent of the $5,176,069 site improvement contracts:	J. M. Corbett Kenny Manley	Skoglund Stagg
1 contractor was awarded 89 per cent of the $563,568 fence contracts:	Builders Chicago	
5 contractors were awarded 100 per cent of the $338,950 landscape contracts:	Sunrise Damgaard Kasik	Midwest Elsner
4 contractors were awarded 96 per cent of the $889,025 plumbing contracts:	Hardin Hach	G. F. Connelly* Great Lakes
6 contractors were awarded 90 per cent of the $1,938,286 heating contracts:	Halm Independent Boiler & Tank Midwesco	J. D. Rice Tropf Clearing
4 contractors were awarded 95 per cent of the $1,170,396 electrical contracts:	M & G Electric Premier	Hecker A. S. Schulman
Chicago Park District		
5 contractors were awarded 89 per cent of the $3,633,528 site improvement contracts:	Dillon Chatham Consolidated	Bigane Roseland
3 contractors were awarded 82 per cent of the $439,815 landscape contracts:	Lawrence & Ahlman Berthold Nursery	Grundstrom
4 contractors were awarded 92 per cent of the $833,570 plumbing contracts:	Peter Smith G. F. Connelly*	Clear Halm
4 contractors were awarded 90 per cent of the $162,174 fencing contracts:	All State U.S. Steel Fence	Midwest Ace
7 contractors were awarded 89 per cent of the $2,470,570 electrical contracts:	Apex Gordon Lange G. E. Contractors	A. S. Schulman Hecker Unlimited
Board of Education		
5 contractors were awarded 98 per cent of the $1,312,968 painting contracts:	Kretchmar Hollins** Cazel	Oosterban O'Hara
5 contractors were awarded 78 per cent of the $2,064,584 site improvement contracts:	Dillon Bigane Basic Paving	Roseland Standard Grading
5 contractors were awarded 77 per cent of the $3,207,159 roofing contracts:	Norton Boice Powell	Mansfield Jones & Cleary
5 contractors were awarded 97 per cent of the $461,134 fencing contracts:	All State Flynn Lane-Stewart	Chicago Fence Guard Fence
Cook County		
3 contractors were awarded 96 per cent of the $1,873,655 plumbing contracts:	G. F. Connelly* Linton	Fullerton
6 contractors were awarded 100 per cent of the $3,232,237 electrical contracts:	Block Midwest Interstate Divane	Gerson Tri-City Gibson
7 contractors were awarded 100 per cent of the $3,477,280 heating contracts:	Wm. Adams Admiral Voris Hardin	Mellish & Murray Gideon Martin
Metropolitan Sanitary District		
1 contractor was awarded 98 per cent of the $2,875,199 heating contracts:	Independent Boiler & Tank	
2 contractors were awarded 89 per cent of the $1,029,489 electrical contracts:	Loyola	Northern States
2 contractors were awarded 99 per cent of the $2,475,758 plumbing contracts:	Great Lakes	Hardin

*George F. Connelly, chairman of the board of G. F. Connelly and Company, is also an Examiner of Plumbers for the City of Chicago.

**A black contractor

Source: Gathered and analyzed by *The Chicago Reporter* from public records, January 1, 1972 to June 30, 1974.

There are minority contractors performing smaller paving and concrete work. City officials say, however, it is too expensive to break up large road contracts into smaller segments accessible to minority contractors.

Nor can the $42.2 million the City and Sanitary District spend on sewer and tunnel work be broken up, according to Eugene H. Dibble, former Sanitary District

Continued on page 7

The Top Minority Subcontractors with Six Public Agencies

The following are the top minority construction companies doing work with public agencies. Minority construction companies have received a total of $6,650,170 from the six agencies since 1972.

Board of Education	$1,440,325
Wil Hollins Co.	521,320
Crossley Construction (Masonry)	190,000
F & W Plastering	171,250
Southtown Electric	99,965
Duke Painting	79,000
King Painting	68,500
Lennox Plastering	60,150
Taylor Electric	39,864
Ronny Dean Tile	32,118
Montalvo Construction	28,933
City of Chicago	$1,769,543
Files Electrical	302,000
Crossley Construction (Masonry)	270,000
Lee Concrete	245,000
Lennox Plastering	221,000
Crawford Construction	161,000
Mid-Co. Plumbing	68,500
Cordaye Builders	66,985
C. F. Moore Construction	54,436
Archway Steel Erectors	50,550
Renoja Interiors	48,960
Cook County	0
None	
Metropolitan Sanitary District	$269,695
Solar-Ray Electrical	260,000
Englewood Construction	7,695
Gray and Son Painting	2,000
Chicago Park District	$58,079
R. S. Bailey (Painting)	20,529
F & W Plastering	20,000
Duke Painting	12,650
L & M Fence	4,500
A. Williams Tuckpointing	400
Public Building Commission	$3,112,528
C. F. Moore Construction	510,772
Monarch Construction	365,000
Lennox Plastering	313,500
Renoja Interiors	292,995
Morton Tile	245,524
F & W Plastering	235,882
Mobart Construction	200,000
Bes Electric	193,000
R. S. Bailey (Painting)	169,641
Solar Heating	120,000

Continued from page 1

two questionable needs. First, the sponsoring government agency can confiscate the deposit if a contractor backs out after being designated the lowest bidder. "This never happens in construction," explains James P. Arnold, the city's acting purchasing agent. "A contractor who bothers to bid is going to take the contract if he is the low bidder."

Secondly, the bid deposit makes it expensive for someone off the street to enter a frivolous bid. But these precautionary measures result in overkill. The cash deposit also keeps the bona fide small and minority contractor out of the market.

"Most minority contractors cannot put up a bid deposit even on the smaller jobs," says Ellen Johnson, loan fund manager for the Chicago Economic Development Corporation. "Few minority companies can afford to let even a few thousand dollars sit idle for months," she adds.

During the past three years, more than 70 per cent of the contracts let by six local government agencies were each priced at $50,000 or more, so the average bid deposit was considerably in excess of $5,000. "When you consider that the average yearly sales volume of a minority contractor in Chicago is only $50,000, it is obvious that the minority contractor does not have the cash resources available to bid on these larger contracts," says King.

In lieu of substantial capital reserves, the contractor must have an established line of credit with a bank.

"Banks will not give a minority contractor a line of credit assuming he will get contracts, because banks know he is going to have one hell of a time competing for jobs," confides one local banker. "The minority contractor has to have a contract in hand before the bank will give him a loan. But what is not available are the contracts, and that is what scares banks."

The minority contractor cannot enter a bid without cash in hand for the bid deposit. Yet, without a successful bid, the contractor cannot attract the cash from a bank necessary for the required deposit.

Two agencies, the Chicago Park District and the Board of Education, allow bid bonds in lieu of the bid deposits. The bonds, purchased from surety companies at a small percentage of their face value, give companies with small cash reserves a chance at bidding large jobs.

Even these bid bonds are hard to come by, claims Paul King. A surety company will not issue a contractor a bid bond unless it plans on issuing the same contractor a performance bond, says King. Performance bonds are often unobtainable by small and minority contractors.

Before a successful bidder begins work, he must also post a performance bond in an amount equal to the entire cost of the project. The bond assures that the project will be completed.

If a contractor defaults on a job, the public agency which sponsored the project can collect the extra cost of finishing the work from the surety insurance company issuing the bond. However, the sureties only underwrite contractors whom they are absolutely confident will complete their jobs.

In 1969, only 34 per cent of minority contractors in Chicago had performed public work requiring a bond. The U.S. Department of Housing and Urban Development in 1969 found that none of these Chicago contractors, and in fact, no minority contractor in the nation, had ever defaulted on a bond. Yet, HUD concluded, access to bonding was the single largest source of difficulty for the minority contractor.

SBA Guarantees Bonds

The Small Business Administration intervened in the bonding process in 1970. Today, SBA can guarantee 90 per cent of a surety bond issued to a small minority contractor.

"The SBA program is helpful, but it still requires the surety company to come in for 10 per cent of the action," King says. The sureties are reluctant to wade in even that far.

Carl E. Dawson, operational services coordinator for the Board of Education, cites examples where minority contractors could not even get bonding for contracts priced under $2,500. The bond remains a gigantic hurdle, comments one contract compliance officer.

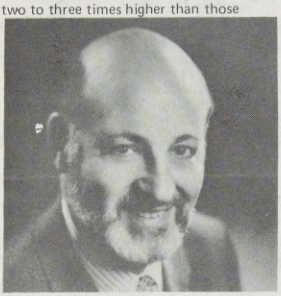
This year, SBA's Midwest office has guaranteed 280 performance bonds for minority contractors out of the approximately 1,350 bonds guaranteed in this six state area. In the last three months, 84 per cent of these bonds have gone to small white contractors.

Anthony Zanetello, surety underwriter for the SBA, says surety companies usually require contractors to tender collateral before they will issue even the SBA guaranteed bond. The collateral, either in cash or a statement of personal indemnity, will equal at least 10 per cent of the dollar amount of the contract.

As with the bid deposit, demands for collateral strain the financial resources of a small contractor. A ranking officer of a major Chicago-based insurance company thinks the demand for collateral is a highly unusual practice for the insurance industry, and unique to the surety bonding companies working with SBA. It has been the experience of bank officers at Hyde Park Bank that cash collateral is requested only of their minority contractors. Zanetello says the default rate for minority contractors on SBA guaranteed performance bonds is about the same as

white contractors – 1.43 per cent.

Zanetello adds that surety companies have at times eliminated all risk of loss by receiving substantial collateral from the contractor. Yet the surety company continues to collect premiums on 90 per cent of the construction project's cost. (SBA collects the other 10 per cent of the premiums.) Hyde Park Bank officers also recall instances when their minority contractor customers were charged premiums two to three times higher than those



Bernard E. Epton

charged white contractors. City officials cite instances of minority contractors charged as much as ten times more than white contractors.

The Chicago Reporter found that surety companies have the lowest loss rate of all types of insurance, and the highest profit margins of all types of insurance.

"Surety companies were never designed for the guy on the way up," reveals a spokesman for the American Insurance Association, "they are really made for the guy who already has it made."

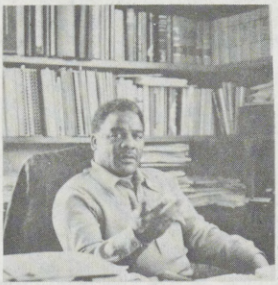
State Representative Bernard E. Epton complains there is no way to question the surety company's claims that smaller companies are higher risks, because the State has no information on the default rates of either large or small contractors.

"The surety companies are still turning down the less than marginal contractor," says Zanetello, adding, "we are 100 per cent dependent upon the surety companies."

Paul King points out: "When rejecting a contractor, a bonding company will refer to a contractor's total assets, his net worth. For the minority builder that net worth is at best marginal, and most often negative."

Rep. Harold Washington and Epton sponsored a bill in the last legislative session of the Illinois House which would have obliged surety companies in Illinois to subscribe to an assigned risk plan. The plan would pool the risk involved in issuing bonds to marginal contractors by distributing the assigned bonds among all the surety companies doing business in the state. The bill said, "A contractor shall not be deprived of his contract by reason of difficulties experienced in obtaining a performance bond through the normal channels."

The bill never got out of committee. It was voted down by a four to one margin



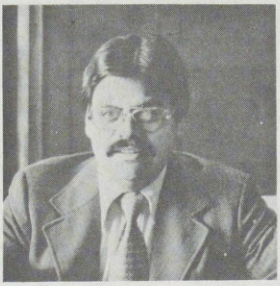
Ramon F. Cases

Harold Washington

in the Industrial Affairs Committee of the Illinois House. "We were bombed," says Paul King. Rep. Washington plans to reintroduce the bill in January.

Bonding problems prevent minorities from bidding on public work. King says, "The unavailability of bonds reaches in even before you bid, because a contractor has to know he can secure a bond before he will spend money to estimate a job."

Another critical problem is the uncertainty of payment. The Board of Education, City and Sanitary District are notoriously slow payers. Money gets tied up in accounts receivable (money due the contractor but not yet collected). Bills for the work keep coming in, and the contractor must pay them out of his



Ramon F. Cases

Henry C. Mendoza

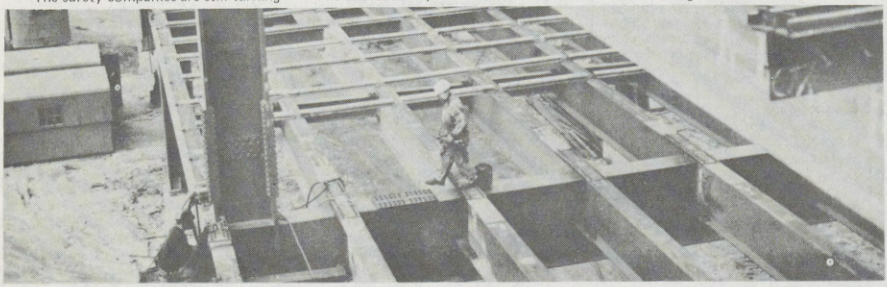
own pocket.

Slow payment seems endemic to all government work. "We have killed some contractors because of our payment schedules," says one city official. But the red tape is wound tightest at the Board of Education.

Henry C. Mendoza, of Hyde Park Bank, says, "We tell our customers to stay away from the Board." Carl Dawson admits that "banks are not particularly interested in lending money for Board jobs, especially to small contractors."

"Banks cannot deal with customers whose payment habits they can not predict," King adds.

"We realize we have been slow," says Dawson, "we are working on it." Beside the Board installing more computer equipment, Dawson explains that in cases of delay, he will personally walk a pay order through the Board's bureaucratic



Douglas Longhini

Wacker Drive Extension Project (City of Chicago)

Letters

From and On City Hall

To the Editors:

One of the hallmarks of the present City Administration is its generous and general practice of racial discrimination. Although what has been going on is obvious, the city administration has made constant denials of practicing discrimination and has felt somewhat protected by the shell of secrecy the city uses as a shield.

Your report has uncovered a Watergate of a sort and will help change the course of conduct which the City administration has been folloiwng. I can assure you that the facts stated in the September issue of *The Chicago Reporter* will be heard and reheard by the city until an affirmative action program is adopted that will cause racial discrimination to ride a back seat in Chicago.

William Cousins, Jr.
Alderman, 8th Ward

To the Editors:

Thank you for sending me your report on the survey of Equal Employment Opportunity in City Hall.

This administration believes there is a need for more Latino representation in government jobs. It is one of the areas in which I have been working at the direct instruction of the Mayor since my coming to work in the Mayor's office.

Weekly, I interview possible candidates who are interested in a position with the city and many of those qualified have been hired. Even though improvements have been made, and are still being made, we know we have much to do.

The Mayor has asked me and all department heads to do everything possible to bring substantially more Latinos into city government.

Miriam I. Cruz
Administrative Asst. to the Mayor

To the Editors:

As one who has struggled on numberless occasions to get some relatively harmless statistic or piece of information from city departments and agencies I can appreciate the fantastic job Sandra Bergo and you did in putting together the current issue on city hiring practices.

You are to be congratulated for the persistence and digging. The Reporter richly deserves an award for disclosing for the first time the carefully guarded and embarrasing facts.

Bob McClory
Chicago Defender
Sengstacke Newspapers

To the Editors:

Thank you for sharing with me the most recent issue of *The Chicago Reporter.*

Incidentally, the picture of me is absolutely atrocious. I know the camera only takes what it sees but I would be happy to provide you with a better one, if you need it.

Erwin A. France
Administrative Asst. to the Mayor

Rural Minority Housing

To the Editors:

I read the article on rural housing for minority groups and certainly agree with your opinion that it raises questions about Farmers Home Administration efforts to provide adequate assistance. I have written to Mr. Frank Elliott, FHA Administrator, and requested a full report on FHA efforts on behalf of minorities as well as any steps that are being taken to improve the availability and administration of FHA programs. When I receive a reply I will write you again.

Adlai E. Stevenson
United States Senate

Milton's Finest

Business and Society Picks Most Responsible Companies

Which are the most socially responsible Chicago companies? That's a difficult question, but Milton Moskowitz, editor of the biweekly social responsibility newsletter, *Business & Society,* took a stab at such a list in his July 2 issue.

Noting his "temerity" in compiling such a list, Moskowitz mentions 39 companies including six from Chicago and 11 from New York City. The companies were not ranked.

The Chicago companies are Jewel Companies, Johnson Products, Marcor, Peoples Gas, Quaker Oats and Standard Oil of Indiana.

Moskowitz said he based his list on companies mentioned as "top performers" in the quarterly journal. *Business & Society/Innovation;* the *Business Week* corporate citizenship awards, opinion polls; evaluations by the Council on Economic Priorities and the "day-to-day event which have been reported in this newsletter and other publications."

maze. But Dawson adds, ominously, "the only problem to more frequent payout is an increase in paperwork." Behind every advance is another stack of forms.

Douglas Longhini
Ramon F. Casas

Construction

Continued from page 5

trustee. "Engineering-wise, it is not feasible for two companies to build the same tunnel or sewer at the same time," says Dibble, a black businessman.

Three is not a crowd, apparently. James McHugh, S. A. Healey, and Kenny construction companies have combined to work on the same sewer contracts let by the City.

There are many simpler projects, however, which could be subdivided. The City has built $11.9 million worth of sidewalk, curbs and gutters since 1972. None of these jobs has been broken up and none of the contracts was awarded to minority contractors. These contracts are evenly divided among 11 white contractors.

"Affirmative action policies are the farthest things in the minds of the engineers and project managers," says one minority contractor. "They don't give a damn about minority utilization. All they want is for the job to be built as fast as possible and as cheap as possible."

City officials cite engineering hang-ups

Continued on page 8

The Chicago Reporter

A monthly information service on racial issues in metropolitan Chicago.

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Construction

Continued from page 7

as the reason the $5.1 million in runway repair contracts at the airports cannot be broken up. They say only one company at a time can build or repair the same runway.

Since 1972, six companies have controlled all runway contracts. There are a few small contracts, but even those are controlled by the same six contractors.

The same six have at least a six per cent competitive advantage over any other contractor bidding on future runway contracts, according to city officials.

A contractor can set up his machinery for producing concrete and asphalt on the airport's premises, and the company saves about six per cent by reducing its material hauling costs, explain city officials.

High Fliers on the Ground

One company, Arcole Midwest, has been at O'Hare for twelve years. Peter O'Brien and Consolidated construction companies maintain permanent offices at O'Hare airport.

The public bidding system was supposed to give every contractor a chance at public contracts. To some extent it has worked out that way, but not for everyone, especially minority companies.

The Reporter counted more than 750 contractors doing work for the six agencies since 1972. Most of these companies worked as subcontractors for general contractors and increasingly, these are suburban contractors. Says one city official: "The small, white suburban contractor has no problem re-entering the city." But as the Reporter found, the minority contractor has difficulty cornering his own neighborhood market.

The rules instituted to protect the public interest have made public construction a good living for the well-established, well-connected firms.

The Barons of Public Building in Chicago

J. M. Corbett	$ 9,425,354
Arcole Midwest	8,152,637
Rock Road	11,296,113
Jay Dee	17,327,345
Consolidated	7,582,008
Paschen	14,861,726
Milburn	8,510,686
Brighton/Western	13,620,657
Kenny	8,273,563
Skoglund	5,333,620
TOTAL	$104,383,709
All Minority Contractors	$6,581,670

Five public agencies act as their own general contractors on about a quarter of their contracts. (PBC lets all of its contracts directly to general contractors.) A relatively small number of all companies are awarded subcontracts from the agencies. (See table, page 4)

Minority contractors received only one per cent of these contracts. Only one minority contractor, Wil Hollins (see box), has captured a significant piece of the $91 million in contracts let directly by the five agencies. Hollins has received $521,320 directly from the Board of Education since 1972. But, there is only one Wil Hollins.

Little is being done by the public agencies to encourage minority contractor participation, with the unique exception of the City and PBC's credit formula.

One observer commented, "The guy who actually has to award the contract has been doing business for years with a hell of a lot of white contractors, long before all of this social awareness came up. Well, there are only so many dollars to go around. Any contract awarded to a minority company (he feels) is money out of the white contractor's pocket. There are still a lot of people who are not willing to go that far."

Douglas Longhini
Ramon F. Casas

Subcontracts Let By General Contractors

Type of Contract	Total Value	Total Minority Contractors' Share	Per Cent	Type of Contract	Total Value	Total Minority Contractors' Share	Per Cent
Carpentry	$2,605,149	0	0.0	Ceiling Systems	$3,673,215	248,370	6.8
Waterproofing	487,312	0	0.0	Acoustical Work	1,528,150	252,550	16.5
Glazing	2,643,584	0	0.0	Concrete	12,145,523	273,173	2.2
Millwork	715,813	0	0.0	Tile Work	2,001,908	339,092	17.0
Fence	253,343	5,850	2.3	Painting	2,526,776	460,601	18.2
Insulation	1,860,582	18,605	1.0	Plastering	4,207,806	752,182	18.0
Site Improvement	7,034,881	18,850	0.3	Plumbing	12,490,337	116,303	0.9
Floor	2,413,254	22,000	0.9	Heating, Ventilating and Air Conditioning	24,073,720	120,000	0.5
Steel Erection	4,429,719	43,950	1.0	Electric	26,064,769	619,800	2.4
Landscape	788,158	53,213	6.7	Masonry	15,167,328	1,036,441	6.7
Roofing and Sheet Metal	1,860,993	109,284	5.9				

The contracts above were sponsored by the six public agencies named in the text.

Source: Gathered and analyzed by *The Chicago Reporter* from public records, January 1, 1972 to June 30, 1974.

Construction Success Story: Wil Hollins Paints His Way to Bank



Wil Hollins' story is a spectacular exception to that of the typical minority subcontractor in Chicago. He has consistently succeeded in bidding public work and attaining bonding.

Hollins, who says he has been in the painting business "all my life," started painting apartments and homes before doing industrial and public work.

He now has a staff of 50 men. In the two-and-a-half year period the Reporter studied, Hollins was awarded over one-half million dollars in Board of Education contracts.

Hollins first bid public work six years ago. By then, he knew how to handle cash flows and other administrative challenges of the construction industry. Most bankers, public agency officials and contractors the Reporter interviewed, agree that better management is one of the biggest needs of minority companies.

Hollins says he got Board work by "being a good estimator," and not taking more work than he could handle.



Ramon F. Casas

6/11

Federal Contracts To Minority Firms Termed Imbalanced

• • •

Rights Panel Says Companies Total 4% of U.S. Business But Got 1% of Jobs in 1972

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON — Businesses owned by minorities or by women aren't getting a fair share of government contracts, the U.S. Civil Rights Commission said.

The federal government contracted for $57.5 billion of goods and services in 1972, but minority-owned companies got only $400 million of the contracts, less than 1% of the total dollar amount, the commission said in a 189-page report. Such companies account for 4% of American businesses, the report adds.

Minority-owned companies also received less than 1% of the total of $62 billion of goods and services contracted for in 1972 by state and local governments, the commission said. While little information is available on the number of female-owned companies, "available data suggest, however, that the share of contracts awarded to firms owned by women is minute," Arthur Flemming, commission chairman, said.

The commission's report to the President and Congress recommended that government agencies responsible for encouraging minority contracting step up their activities. The commission proposed that the federal government increase the dollar value of its contracts with minority and female-owned companies by fiscal 1980 to an annual amount at least equal to the percentage representation of such companies among all U.S. companies.

The commission also urged the President to issue an executive order declaring women as a group to be "socially and economically disadvantaged" to make nonminority women automatically eligible for three federal programs that assist minority-owned companies in obtaining federal contracts.

The commission said the minority contracting programs run by the Small Business Administration and the Commerce Department's Office of Minority Business Enterprises plus the "Buy Indian Program" of the Health, Education and Welfare Department have had "limited success" in boosting the number of federal contracts for minority-owned businesses. But the report contends that they can be improved.

"After interviewing officials of 89 firms that participated in the three programs," chairman Flemming said, "we concluded that the programs lacked commitment, planning and coordination, and adequate data and procedures for matching contracting opportunities with the needs and abilities of minority firms."

What of the "equal treatment" for the 40% unemployed Black youth that will be put out of work due to the increased capacities for work stoppages. Attorney General Levi has voiced concern about unemployment leading to more crime.

Have we not learned the danger of making laws that do not represent a full measure of help to all Americans.

There have been xome excellent statements on this subject coming from Mr. Joseph Debro, The ABC, The AGC, and from the Secretary of Labor himself.

The selection of Mr. John Dunlop as Secretary of Labor is a credit to the judgment of President Ford and one in which the National Association of Minority Contractors has extreme hope. Hope is a rare emotion to be found in the average American in today's troubled times and practically an unknown in the minority community. Enough has been written and said, in truth, about Mr. Dunlop's credentials and expertise in labor matters, for us to add anything here. His role in academia along with his active participation in public and private labor matters brings to this office a kind of respectable "doer/thinker type seldom willing or able to work in Government service.

National Association of Minority Contractors supports the nominatiin of Mr. Dunlop, however, we hold these reservations in the unanimity of that support. We know of John Dunlop's specific interest in and contribution to the construction industry. This is a distinct plus in our opinion, if we understand the fact that one out of every seven Americans is employed in actual construction on jobs that occur as a result of construct on. Our reservations stem from the concern

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* * *

Statement of Joseph Debro, black contractor

Mr. Chairman, members of the Sub-Committee, staff and other interested parties; I thank you for the opportunity to present the views of a small black contractor and those he represents.

My name is Joseph Debro, I was born in Jackson, Mississippi. I hold two degrees from the University of California at Berkeley. I am a former Director of the Model Cities Program in Oakland, California, I am the former Executive Director of the National Association of Minority Contractors, I am the author of several articles regarding the problems of minority contractors.

I am President of Gaylor Construction Company. I have been in the construction business for almost ten years.

I have written an article whose title is "A Black Contractor's View of Construction Labor History." I would like to submit this article for the record.

Today, I appear as Chairman of CONTROL (Con-

(Continued next page)

tractors Organized to Lobby). In 1969 we appeared before a House Committee in support of the Surety Bond Guarantee legislation. That legislation is now law. Members of this Sub-Committee supported that legislation on the floor of the House.

Small contractors, white and non-white have done more than $1 billion worth of business under that legislation. We thank you for that support.

My company is a union shop company. We do not advocate the repeal of the Davis/Bacon Act. We are by any measure pro-union.

We oppose HR 5900. We think that this bill is a new, more subtle form of racism. We have asked members of the Congressional Black Caucus and their friends to join us in the opposition. We respectfully ask members of this Sub-Committee to give this bill more study, in order to eliminate the racial restrictions which this bill will impose upon the industry.

Most minority contractors are open shop contractors. They have not signed hiring hall agreements because those agreements would force them to discharge qualified members of their work forces who can not get into the union on a permanent basis. They would, in effect have to discharge their minority work force and employ a white work force.

Racism is alive and well in some of the hiring halls of this country. HR 5900 would allow a racist union to close down a job on which an open shop minority contractor is working.

The Congress has already passed laws which allow the real culprit in this circle of discrimination to escape. Minorities are pitted against workers, when in fact we should be pitted against the large contractors.

Blake Construction, the contractor on the FBI building discriminates in its hiring policies and hides behind the contract which it has signed with the Building Trades Council.

If HR 5900 passes, this will give the large general contractors another opportunity to refuse to use miniority sub-contractors and to give as the excuse the union pressure which might close down his job under this legislation.

Until and unless the Congress is prepared to give us legislation eliminating racism in hiring hall practices, this bill will simply extend the racism to the sub-contractor level.

To give the Committee a fuller understanding of the practices of some of the unions, under existing law, I would like to discuss briefly what has transpired in Seattle, Washington in the past few years.

One of our members brought suit against five unions: Ironworkers' Local 86, Sheet Metal Workers' Local 99, Electrical Workers' Local 46lB, Plumbers and Pipefitters' Local 32, and Operating Engineers' Local 502. Two months later, Judge Lindberg found that the union and their all white Joint Apprenticeship Committees had violated Title VII of the Civil Rights Act of 1965.

Judge Lindberg found numerous occasions of union discrimination. The Ironworkers union, for example, had on a continuous basis denied blacks its hiring hall and provided black applicants and workers false information about employment conditions. The union also referred white workers with little or no experience enabling them to avoid apprenticeship and learn valuable skills on the job.

Judge Lindberg found that the Sheet Metal Workers Union, like the Ironworkers, gave preference to friends and relatives of union members and union contractors often by violating their own regulations.

In spite of the Judge's findings of numerous occasions of violation of the law and in spite of the fact that these unions were all placed under consent decrees and remain under court jurisdiction, no changes in their practices has occurred. They have ignored the law. They continue to ignore the courts.

To give these lawless organizations more weapons to place in their arsenal of discrimination would be unconscionable.

High black unemployment in our cities will lean to open rebellion. We need to guarantee every citizen annual employment. We can not continue to exclude non-white Americans from the world of work.

We see this bill as one that reinforces the ability of craft unions to continue their practices of excluding blacks and other minorities from working in high paying jobs in the construction industry.

We have started to alert the civil rights organizations around the country about this racist piece of legislation. Our research department has developed a relationship between high crime rate, high unemployment and the racism in hiring halls.

Our organization proposes to hold teach-ins in various Congressional Districts around the country. We are going to choose those districts with high black populations as well as those which have high black unemployment. At these teach-ins we are going to discuss those pieces of legislation which we think contribute to that high unemployment. We are going to be joined by the local chapters of the NAACP and the local chapters of the Urban League.

There is some language in the bill which could and will be interpreted as restricting secondary-boycott picketing to labor disputes relating to the wages, hours, or other working conditions of employees, but the effect of the Act will be to give to racist hiring halls the right to close down a job while the courts make a determination about its legality.

The threat of this possibility will be enough to keep a close-shop general contractor from making a subcontract award to an open-shop minority contractor.

The unions' lawlessness in Seattle has been well documented. Large white contractors and unemployed blacks know that even the courts are not able to enforce existing law. Racism in the hiring hall process continues. This Bill will only reinforce this practice.

As a result of the 1972 Amendment to Title VII, the Department of Justice participation in litigating employment discrimination cases has been phased out. The Equal Employment Opportunity Commission has been given the authority to sue, but it has a substantial backlog and is simply unable to take the overwhelming percentage of its meritorious cases to court. Further, the EEOC has not been able to try cases on their merits, that it has authority to sue, because of procedural objections raised by defendants.

The primary burden for enforcement of Title VII, therefore, must rest on the shoulders of private parties and perhaps increasingly, minority workers.

We know that an appeal based on racial injustice has little chance of changing the outcome of this subcommittee action.

We would, however, like to ask that some consideration be given to the burden which this bill will place on people; contractors as well as workers, who are going to be subjected to the caprice of those who choose to be arbitrary and subjective. Who will have the power to decide if an issue is racial? If a subcontractor refuses to sign a closed shop agreement because a union has been found by the courts to be guilty of racial discrimination, can a site on which the subcontractor works be closed down? Can this be determined to be non-racial? If so, by whom?

This bill should provide some redress for those parties unjustly injured. H.R. 5900 should, at the very least, recognize the external social cost of its provisions.

We would first like to point out some of the external social cost and finally recommend some ways of providing redress to those injured, who are innocent bystanders.

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Too much of our legislation is passed without an impact statement on the external cost. This might be a point in our history when we choose to make such an assessment. We recommend that a social impact statement on the external cost of this legislation be made a part of this legislative history. We think that the following categories should be among those evaluated:

1. The cost of additional unemployment among Blacks and other minorities in the construction industry.

2. The increased cost of construction due to a new contingency (the possibility of Situs Picketing)

3. Higher cost of aid to dependent children because of increased unemployment.

4. The cost of increased crimes of desperation.

Our most persistent concern involves the issue of redress for those who are injured, who are the victims of whim and caprice. The minority contractor who is ready, willing and able to work, but who cannot because of a dispute between two other parties over whom he has no control. The minority worker who has trained in a right to work jurisdiction and who cannot get into the hiring hall process despite his 10 years of experience. The open shop contractor who pays prevailing wages, but who refused to sign a hiring hall agreement with the criminal who represents the iron workers in Seattle.

The open shop contractor who pays prevailing wages, but who refuses to sign a hiring hall agreement with the racist plumbers in San Francisco, Calif.

How do members of this committee propose that the abuses which are likely to occur be redressed?

I would hope that this committee will provide a redress procedure more efficient and less costly than the Tort system.

With the limited resources at our disposal, we were able to come up with a few thoughts on the subject of redress.

Why not pay damages to those who are injured as a result of the unjust applications of the provisions of this bill.

Charges often make more sense than other approaches, because of their capacity for motivating the allocation of resources. Therefore, we recommend that a bond be required to be posted before Situs Picketing can commence.

A Federal judge might be required to review the items at issue before Situs Picketing might commence. There needs to be some checks and balances built into this system. There must be a way to prevent the Unilateral abuse of this power over the right to work.

This bill, if passed, should have a self-enforcing penalty for abuse, extracted from those who might use this power in ways not intended by the Congress.

In the final analysis, our fear is not of the legislation. Our fear is the abuses that we will encounter in our daily work, in the future, as we have in the past.

Our fears are based on the history of our contact with those who will not obey the law, even under court order.

as to whether Mr. Dunlop can serve a constituency that is not just the 84 million people who are employed during good times in the work force, not only those in organized labor, but also the millions of Americans who are unemployed, under employed, and more particularly those who are not even counted in the statistical labor reports because they have given up hope and are no longer identified as seeking jobs. Clearly, these categories of persons need the attention of the new Secretary of Labor too. But the 41% unemployment rate among Black youth (as stated by James Reston in the February 22nd edition of The New York Times), is an alarming current problem that has potential for future corollary danger, this portion of his constituency must be viewed as a priority group for help and attention.

We realize that there are no easy solutions to these problems and one of the worst things that could happen is for the new Secretary to come up with s logans which offer the illusion of hope, but in fact result in disappoitment. As more and more Americans try to improve the quality of their lives, their demands will be focused on the centers of Government. We need little reflection to concede that the total of all the demands of all of the special interest groups - management, labor, minorities, women, the elderly, veterans, and so on, are more than the system can accomodate. Therefore a prime requisite for Mr. Dunlop's success will be to understand and admit what he cannot do, and what is possible. We intend to propose a plan that is possible to implement, and believe that

Mr. Dunlop can deal with it, if he will.

Before going too far afield, I would like to impart some information about our organization and what it does. National Association of Minority Contractors is the largest organization of minority contractors in the nation. The organization has a noble and simply stated objective - We seek to improve the condition of minority craftsmen and contractors, and to obtain for non-white and other disadvantaged Americans, a fair share of the nation's construction projects.. The attached Exhibit A more clearly illustrates National Associatiin of Minority Contractor's purpose.

In my capacity as Vice President of the National Association of Minority Contracors, Chairman of its Labor Committee and Executive Director of the United Builders Association of Chicago which is its local affiliate, I would like to bring the following proposals to the new Secretary's attention for his consideration and support:

First: Research grants for black technical colleges and high schools in conjunction with National Association of Minority Contractors should be developed.

Second. The continuation of funds for manpower training programs, and other minority-oriented training programs in construction, in combination with Justice Department enforcement where recalcitrance is met.

Third. The concept of goals and timetables for minority hiring which should continue to have top priority in the Department.

Fourth. Joint apprenticeship councils across the country being required to integrate, so as to have non-white members on both the labor and management sides of the decision making apparatus on apprentices.

Fifth. Making special efforts to communicate OSHA material to the minority community by using minority contractor associations as the vehicles.

Sixth. Black construction contractors being included on or having direct input in the National Council on Productivity, Construction Industry Stabilization Board, and other national boards dealing with construction.

Seventh. - Allowing construction training and eventual union admission to men lacking high school educations and/or over the so-called apprenticeable age - 26 - 30.

Eighth. Upgrading non-white union members in the craft unions.

Ninth - Restructuring the guidelines for manpower training programs so as to make training funds available to minority contractors more readily.

Tenth - The attempt to include the Veterans Task Group and the Handicapped Workers Task Group within the OFCC will cause the effectiveness of that agency to be diluted therefore National Association of Minority Contractors feels that additional staff is needed including a Deputy Director. Currently, there are only 130

people monitoring 2,000 government offices and 350,000 contracts. It is important that the OFCC Director should have direct contact with with people in the field; and they in turn, should report directly to the Secretary of Labor rather than the Assistant Secretary of Employment Standards.

Eleventh = Executive Order 11246 covering minority workers and women whould be amended to include minority contractors.

In supporting your appointment on behalf of the National Association of Minority Contractors, I ugte you to continue and enlarge upon the activities of the Chicago Construction Co-ordinating Committee (CCCC). The CCCC is a tripartite body consisting of representatives of Federal, State and local governmental agencies; construction industry management, including builders, architects and engineers, and organized labor. At the October 31, 1974 meeting of the CCCC, I presented a motion, which was unanimously adopted that the Committee go on record as endorsing the concept of a national office for co-ordinating construction affairs.

The CCCC has been active in the following areas:

Point 1: In our efforts to counter-act seasonality and increase productivity in the construction industry, the staff of the CCCC has been monitoring public construction contract awards in the nine-county Chicago area. The results clearly indicate public construction awards to be very heavily affected by the annual federal fiscal cycle. Public construction accounts for approximately 40% of all construction activity in this region. In our efforts to counteract seasonality,

the CCCC has impressed upon the federal, state and local public agencies to distribute their future awards more evenly in an attempt to smooth the award curve and increase off-season construction activity.

Point 2 - The CCCC has been instrumental in analyzing and constructively criticizing pending environmental regulations.

In essence this bill neds amendments before passate. We need to broaden the base of those who will be recipients of this "EQUAL TREATMENT" sought after in this Bill.

We need to get greater protection for the minority worker being victimized by reckless decisions made by the IRS. Many small and minority contractors are being padlocked by overzealous Revenue Officers, thus driving the unemployment rate in the industry even higher. I want to take this opportunity to publicly commend National IRS Commissioner Donald Alexander for his time and committment toward alleviating this problen. (See Jet Magazine). The Commissione needs to know, however, that some of his subordinates in the field display no corresponding will to carry out his wishes.

We need Equal Treatment to allow minority contractors within NAMC to obtain Bureau of Apprenticeship Training (BAT) certification to allow us to train our people and employ them paying the prevailing wage for the productivity of the work they generate.

We need Equal Treatment from the Comprehensive Employment Training Act so as to allow us to use these funds in the training and on the job education, minority contractors want to give minority persons. This should be especially attractive to the majority community which finds it so difficult to hire minorities under the present structure for entry into the crafts.

Until Mr. Chairman and members of the committee, we can include this kind of broad application of Equal Treatment in the Bill, we must reject it as just another slogan intended to please a few but lacking the content or compelling will to relieve the suffering of the many.

The CHAIRMAN. Now if we can ask to the table Mr. Michael Markowitz, director, Labor-Management Relations, National Association of Manufacturers.

Mr. Markowitz, we appreciate your presence and testimony.

STATEMENT OF MICHAEL MARKOWITZ, DIRECTOR, LABOR-MANAGEMENT RELATIONS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. MARKOWITZ. I appreciate the opportunity to testify on behalf of NAM, Mr. Chairman.

Because the hour is growing a bit late, I will not read my statement in its entirety. I will instead excerpt portions of it, which will allow more time for questions, should you so choose.

I understand that the full statement will be made a part of the record.

The CHAIRMAN. It certainly will.

Mr. MARKOWITZ. The National Association of Manufacturers is, of course, a voluntary, nonprofit business organization whose membership includes companies of all sizes.

As major users of construction, our members have a vital interest in S. 1479. NAM's interest and that of our membership is not limited just to issues involving the direct cost of construction, although this is certainly important to us.

Our concern also is that the law presently in effect regarding secondary boycotts in the construction industry not be undermined, because we believe that once this process begins, it will undoubtedly spread to industry generally.

We also believe that the law as it applies to the construction industry is presently sound. Accordingly, speaking for American industry, we wish to make several points with respect to S. 1479 which we believe lead to the conclusion that its passage would be a step backwards in the efforts of Congress, the NLRB and the courts, to maintain sound, balanced and rational labor-management relations.

Our fundamental position before you is this: There are simply no good reasons for disturbing the existing law regarding secondary boycotts.

When Congress passed section 8(b)(4)(B)—the secondary boycott provision—of the Taft-Hartley Act, it knew it was engaged in a most difficult process. It was attempting to strike an extremely delicate balance in labor disputes—the protection of the power of employees to strike and publicize disputes with their employers and the right of neutral employers to be free of such disputes.

Congress did not attempt to restrict picketing unreasonably in a primary dispute situation, since in such a dispute the parties are true antagonists. One side wants something from the other side, which in turn is resisting the demand. The law does not in these circumstances choose sides. The "winner" is determined on the basis of strength and perserverance; the law presumes either that most disputes—most such disputes are fair fights, or that in any event the Government has no business intervening in these matters. The underlying principle is one of laissez-faire, and the belief that ultimately this is in the public interest.

The intent of Congress with respect to secondary boycotts, however, was vastly different. In these cases it was believed that no longer was there a fair fight situation. The union is no longer taking on its foe directly with its own resources and muscle.

In a secondary boycott the union strikes or pickets an employer who is not involved in a primary dispute, so that such an employer, who is really a "neutral," will put pressure on the primary employer, to make him give in to the union.

I wish to say that this point cannot be stressed too emphatically. Congress believed that putting pressure on a third party to force it to intervene in the union's behalf in the real dispute is unfair and wrong. And likewise, all the NLRB and court decisions written since enactment of 8(b)(4)(B) have been designed to interpret and put flesh on that fundamental determination of Congress.

We go on in our testimony at great length in our analysis of the law and how it came to be and how it developed. I will skip over that, although I certainly hope that it is read, because I find that there is very often a misapprehension as to what the law provides and how the law developed and reasons for its developments.

Let me now then turn to what we believe the proposed legislation should accomplish, or is intended to accomplish.

In simplest terms, S. 1479 would grant the building trades unions a significant exemption from the secondary boycott provisions of 8(b)(4)(B). As we read the bill—and admittedly there are ambiguities in the bill—but as we read it, the construction trades probably could engage in the following kinds of strikes and picketing on a common site, and shut the entire project down.

1. They could force a nonbuilding trades union off the job.

This is not limited to the subcontractor which is not unionized, but would also include an employer with a contract with a union which is not affiliated with the AFL–CIO building trades department. This can be done by simply claiming that the employer is not paying area standards, and this, for all practical purposes, would enable unions to circumvent the prohibition in Section 8(b)(7)(A).

2. We also believe that the bill would enable unions to strike the entire construction site and close the entire construction site to prohibit the use of prefabricated materials on the job site where the union has a work preservation objective which is not otherwise unlawful.

3. We believe that there is a possibility—although I don't believe that it actually was intended by the framers of the bill, but I think language to meet their intent should be spelled out more clearly—I think there is a possibility as it is written that this bill would have the effect of shutting down industrial sites.

Thus, if General Motors subcontracted its painting work to a painting subcontractor whose employees were not members of the AFL–CIO building trades department, the employer could be struck based on the claim that the employer was not paying craft union wages, or not using craft union restrictive practices.

Because the industrial employer may not set up gates reserved for the subcontractor's employees, the entire industrial complex could be subject to picketing and a possible shutdown.

And a fourth effect of this bill could be to force an employer to accept an interpretation of the contract where the contract does not have a no-strike provision.

It should be noted that where contracts do contain a no-strike clause, the more powerful union could merely eliminate it after expiration of the current contracts.

We believe that the real issue presented by S. 1479 is whether it would be sound public policy to override present NLRB and court interpretations of the law and declare, in effect, that all employers engaged in construction on a construction site are in effect, interrelated for 8(b)(4)(B) purposes.

A number of legal scholars have considered the question and, as Prof. Norman Cantor of Rutgers Law School concluded after a thorough review of the authorities, they have "supported the Board's refusal to extend the related work rationale to construction industry cases."

According to Professor Cantor, and I quote:

> The scholarly consensus is, therefore, that the Board is correct in withholding such broad power from the building trades unions.

These scholarly opinions are based on the fact that because of the inherent interrelations of construction tasks, unions would, under the *General Electric* standard, be able to shut down entire projects over any and all legitimate labor disputes, no matter how insignificant. A dispute involving 10 employees of a glazier, for example, would be—in a construction job that might involve thousands of employees, would be able to close down the entire project—in effect, a blackmail potential of the power that would be awarded to the unions in those situations should be obvious to you, and are abhorrent to us.

You will find very few disputes on the site that are not rapidly resolved in the union's favor, on construction sites when this bill is passed—if this bill is passed.

We believe that the legal scholarship in the field is correct, and we take the position that S. 1479 is unsound for the following reasons:

First: We believe that the construction unions are seeking an unwarranted increase in their present enormous power.

We believe that consideration of S. 1479 must be in the context of the times in which we live, and must take into account the relative position of construction unions vis-a-vis other unions, their employees, and other segments of our society.

A casual reading of most newspapers discloses that homebuilding has been in a slump for several years, in large measure due to the skyrocketing costs of labor in the construction industry. We note that that isn't the exclusive reason, as you pointed out, Mr. Chairman, in your colloquy with Mr. Abrams, but we believe, as Mr. Abrams said, that it is certainly one of the significant factors.

We read about the large number of bankruptcies among the building contractors; we know of course about our rampaging inflation and the impact of huge wage increases on this inflation.

We are also well aware of the great numbers of people either out of work or earning marginal incomes.

It is in this context that the building trades unions come to you seeking greater privileges. Should you grant them these privileges? Let us see if they need them.

Now, we go on in our testimony to discuss the nature of collective bargaining relationships between unions and contractors in the construction industry. I will omit the discussion of that, because it is in my prepared statement.

We then go on and describe just how well the unions, in fact, in the construction industry are doing with respect to the wages. Their wages quite simply are out of all proportion, and are clearly in excess of the wages granted to unions in other sectors of industry. Just to highlight this: In 1975 the median first-year wage increase negotiated to date in both manufacturing and nonmanufacturing—excluding construction—is 44.9 cents an hour. For construction, the year-to-date median is $0.76 an hour. In the most recent 2-week period for which we have information—May 6 through May 19, 1975—the median manufacturing was 39.7 cents an hour; in construction the median wage gain was 85.3 cents an hour.

Illustrative of the recent settlements in the construction industry is an agreement in Portland, Oreg., between United Association Local 51 and the Plumbing, Heating and Cooling Contractors Association, calling for a $2.30 an hour increase in wages and fringes. This settlement was so alarming that Secretary of Labor Dunlop recently singled it out for criticism.

It would seem then that the construction unions are not now suffering under a heavy and unequal yoke. Far from it, they are actually faring much better than their counterparts in manufacturing. We therefore fail to see the need for further expansion of their power which S. 1479 would grant them.

Our second contention is that the claim of construction unions that they are treated unequally under the law lacks merits.

Although the construction unions argue that the law as it presently stands make them second class citizens, actually the opposite is true. In fact the construction unions presently enjoy privileges and immunities not granted to other unions.

Section 8(e) of the NLRA grants to construction unions the right to enter into hot cargo agreements covering work at construction sites. Virtually all other unions are denied this special exemption from the law.

Section 8(f) of the act grants special organizational and hiring hall rights to construction unions granted to no other unions.

We summarily submit that this special treatment of construction unions did not come about by accident or happenstance. Congress believed that the construction industry had problems and needs that were unique to it and which required statutory recognition. But the fact remains that the construction unions do receive special and preferred treatment under law. How much more special treatment do they need?

Our third and final contention is that because of the nature of the construction industry in the present NLRB and court interpretation, section 8(b)(4)(B) is both necessary and correct.

As just noted, it is possible to contend that the nature of the construction industry requires that its unions have certain special rights above those granted to other unions. But we believe that the converse is also true; that the nature of the construction industry is also such that to apply the *General Electric* related work standards to it would be a major public policy mistake.

We believe that the principles enunciated in *Denver* and *Markwell & Hartz* are correct. To treat a construction situs situation the same way as a manufacturing situation would do incalculable harm. To apply the related work test is meaningless. All the other contractors will be treated as neutrals or none of them will ever be so treated. Either position yields unsatisfactory consequences. And this, of course, is precisely the point made by the legal scholars who have dealt with the issue.

In manufacturing situations it is possible to look at a particular piece of work performed by an outside contractor and see if it is in fact related to the normal operations of the manufacturer or not. If it is essentially related, then the contractor is unprotected, and vice versa. The conclusion will depend on a precise evaluation of the facts. A case could go either way depending on those facts. Thus, the entire project or plant may be shut down under some circumstances but not under other circumstances.

This would not be the case in the construction industry if the related work test is applied and if it is concluded that all of the numerous construction contractors usually present on a construction job are interrelated. Every union dispute with any contractor would involve every other contractor and would shut down the entire job.

The question of whether related work was involved would have already been answered in the affirmative and unlimited picketing would automatically be allowed. This would be the result of applying the *General Electric* standards to construction. And this is what the drafters of S. 1479 would seek to do by legislation.

Every dispute between a union and one of many contractors or subcontractors, no matter how trivial, would be allowed to come and close a major building project. A dispute involving three or four employees could throw thousands of other workers out of work and add enormously to the costs of construction. Ultimately these added costs would be passed on to us, the consumers.

In conclusion, we believe that passage of S. 1479 is both unwarranted and unwise. Construction unions already are too strong and would be given a virtual stranglehold on our largest and most important industry—construction. But the price, ultimately, would be paid by all of us.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Markowitz.

I wanted to return to page 8 of your statement, point 3.

Mr. MARKOWITZ. Yes?

The CHAIRMAN. There, to shut down industrial sites. What is your hypothesis there? What is the situation?

Mr. MARKOWITZ. Well, I suppose that if a contractor is working on an industrial site; for example, a General Motors plant, and there is a dispute involving a construction union, the construction union has a dispute with a contractor on that site, it would then be allowed to picket, to set up picket lines, and we don't really see anything in the bill that would limit the picket lines to a particular part of the site.

I believe that although you probably intend to immunize industrial unions and industrial companies from the consequences of that kind of dispute, from spreading out and in effect closing up a factory, as I read the bill, it certainly isn't clear in the bill that such a restriction would apply.

The CHAIRMAN. I see. When you refer to General Motors subcontracting its painting work, you are not referring to the painting of its products?

Mr. MARKOWITZ. No, no.

The CHAIRMAN. There was a little ambiguity there.

Mr. MARKOWITZ. No, sir.

The CHAIRMAN. Two out of the three of us thought you were talking about painting its product.

Mr. MARKOWITZ. No, no, I think it was inarticulately phrased.

The CHAIRMAN. I have no questions.

Senator RANDOLPH. Mr. Chairman, I have, because of certain interruptions, rather hurriedly attempted to follow the statement of Mr. Markowitz, and there are certain questions that I will ask that may be of general interest, Mr. Markowitz, as well as specifically related to the legislation that is before us.

I think we might want, Mr. Chairman, to know at this point—and I am sure it has been developed and will be developed later, if this legislation became law, what would we find in the construction industry, a lesser or greater number of strikes?

Mr. MARKOWITZ. I think probably a greater number of strikes, although I think the nature of the strikes probably would be different. I don't think you would have organizational strikes; I think the outcome of those would be too clear. You really would not have union and nonunion crews mixing on the job, I would not expect.

I would expect that most contractors, if they had any sense, would either go all nonunion or union.

The kind of strikes that you will have would be strikes where a particular union makes a wage demand, for example, that is, let's say an excessive wage demand, or one that is regarded as an excessive demand, and because of the tremendous power that these unions would have, in effect, to close down an entire site, you would find very few—I suspect you will find very few contractors able to avoid capitulating to these demands.

You will see a lot more strikes, I think, by unions in furtherance of wage demands, in other words. I think the nature of the strikes will be different than the nature of the strikes that we presently have; the mix will certainly be different.

Senator RANDOLPH. Mr. Markowitz, do you have figures, or can you supply them to the subcommittee, indicating, over the period of 5 or 10 years, up until the present, what the incidence of strikes has been in American industry from the standpoint of the construction industry—not other types of employment?

Mr. MARKOWITZ. I am not sure if the Bureau of Labor Statistics has such figures, if the Labor Department——

Senator RANDOLPH. You mean a breakdown?

Mr. MARKOWITZ. I am not sure if they have them or not. I wouldn't have any independent method of getting those figures for you. I am not sure that I can provide that information.

If I can, I will.

Senator RANDOLPH. We are hearing about strikes in other countries at the present time, indicating that they are beginning to occur with a frequency that did not exist in past years.

To what do you attribute that? I realize this has nothing to do with the subject matter, but I just wanted to have your thinking on that.

Mr. MARKOWITZ. On why there are more strikes in other countries than there have been in the past?

Senator RANDOLPH. That is correct.

Mr. MARKOWITZ. Well, I can only speculate on the answer, of course.

I think in large measure the unions of course are stronger now in many countries than they have ever been; in England I would say that's true, in Italy I would say that is true.

I think also that there is at work in the world generally, I suppose, also, a desire on the part of most people to get more which is, I might add, perfectly understandable, to improve their lot in life. Yes.

And unions are no different from any other group that wants to get as much as they can. And I am certainly not saying that that is bad.

As I say, the problem, I suppose, is that there have to be limits; not everybody can have everything that they want. Obviously, in the case of minorities, for example, they have been denied certain basic rights. All they want, really, is a quality at this point, to get to the point where they are starting from equal—from even.

In the case of unions, I don't think that is true any longer. They have long since passed the starting gate.

I think one of the real dilemmas in this country is the only real arbiter of what group should get what, in the final analysis, is the Congress. You are the only people that can tell businesses they can't fix prices, or they have to make safe products. You are the only people also who can tell the unions that they can't have common site picketing going, that they ought not to, and that is a duty that we hope that you won't abdicate.

Because we believe you are the only ones who can somehow bring into balance all the forces that are seeking to get as much as they can.

I hope I have answered your question.

Senator RANDOLPH. Yes, I think so.

There is no, let's say, political thinking in my question now. It is a matter of fact, by the statements made by President Ford in his campaign for reelection, that he will stress the fact that in Government there has developed an over-regulation of business, of industry—perhaps our whole society.

Do you agree with that philosophy?

Mr. MARKOWITZ. Certainly my association takes that position, and I will reflect the view of my association, that there has been an over-regulation of business.

Senator RANDOLPH. Mr. Chairman, I realize that as I conclude, I am not exactly on the subject matter, except that I think you yourself brought some philosophy into the hearing today, and Mr. King and others, about the long struggle that we have developed to bring our goals into place.

Mr. MARKOWITZ. I just wanted to say, Senator Randolph, although I have not addressed myself in my testimony to Secretary Dunlop's conditions or proposals, I suppose this would be an opportune time to say that we oppose them, we think that the bill is a bad bill, we believe that the proposals of Secretary Dunlop would merely make slightly better, I suppose, what is a bad bill, and I think our position is that we oppose the conditions set forth by Secretary Dunlop on this bill.

Senator RANDOLPH. Mr. Chairman, a postscript to overregulation, that does not mean that there is not a necessity for regulation. We try to insure, for example, the health and safety of coal miners in the Nation.

There are reasons to bring into being protection for people. You are not against that?

Mr. MARKOWITZ. Oh, no. It is impossible to ever take the position that the Government should not regulate. I mean, that is the whole purpose of Government—to regulate. I suppose the whole question is: How extensive should that regulation be, and at what point should it become—to use an overworked word—counterproductive?

That point can be reached. I see where the CAB now is talking about deregulating some of the air fares, the actual fare structure, but certainly we don't take the position that there should be no Federal regulation.

I think that would be an absurd position for us to take, and of course, business has to be regulated just as other segments of society have to be regulated.

You can't take the position that everybody should be regulated but us. You know, the question is, I suppose, establishing the proper boundaries of that regulation.

Senator RANDOLPH. We do get submerged in red tape; it is natural. It's not good. Yesterday we had before the Senate the school lunch program, and I offered an amendment which, as the chairman knows, was accepted by the managers of the bill, and what was it?

It was a very simple amendment, but one that was very necessary. We frankly, in rural States—West Virginia being a rural State—have had necessary funds withheld for 3, 4 and 5 months for those programs, wholly because we did not have, really, the manpower—or womanpower—to take care of all the paperwork that was necessary with reference to the program.

In a rural area, you pull someone off the essential job which he or she is doing to do that so-called paperwork, which happens so very often, and we ought to try to eliminate that in any program.

Isn't that a fair thing to say?

Mr. MARKOWITZ. That is certainly true. I would say that it is awfully tough to be a small businessman today. You know, the big businesses somehow always have people to—they can always keep up with the laws, they can do the necessary paperwork, but to be a small businessman and try to cope with the blizzard of requirements is really awesome, and I certainly would not like to be in that position.

The CHAIRMAN. We have brought the blizzard to ourselves. I don't know if you have had the opportunity—I'm not sure whether this year you must file as I do, because my seat is up next year, and I'll tell you, we need the extra staff just to take care of the paperwork that we must file today, even—long before we have made up our mind whether we are going to run again.

It is contagion around here, and we have imposed this upon ourselves.

[The prepared statement of Mr. Markowitz follows:]

TESTIMONY OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
ON
COMMON SITUS PICKETING - S. 1479
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE LABOR AND PUBLIC WELFARE COMMITTEE

July 9, 1975

My name is Michael Markowitz and I am Director of Labor/Management Relations for the National Association of Manufacturers.

The NAM is a voluntary, non-profit business organization whose membership includes companies of all sizes and accounts for a major portion of all manufacturing business in the United States. As major users of construction our members have a vital interest in S. 1479. NAM's interest, and that of our membership, is not limited just to issues involving the direct cost of construction although this is certainly important to us. Our concern also is that the law presently in effect regarding secondary boycotts in the construction industry not be undermined because once this process begins it will undoubtedly spread to industry generally.

Accordingly, speaking for American industry, we wish to make several points with respect to S. 1479 which we believe lead to the inevitable conclusion that its passage would be a step backwards in the efforts of Congress, the NLRB and the Courts to maintain sound, balanced and rational labor-management relations.

Our fundamental position is that there is no good reason for disturbing the existing law regarding secondary boycotts.

When Congress passed Section 8(b)(4)(B)--the secondary boycott provision--of the Taft-Hartley Act it knew it was engaged in a most difficult process. It was attempting to strike an extremely delicate balance in labor disputes--the protection of the power of employees to strike and publicize disputes with their employer and the right of neutral employers to be free of such disputes. Congress did not attempt to restrict picketing unreasonably in a primary dispute situation, since in such a dispute the parties are true antagonists. One side wants something from the other side which in turn is resisting the demand. The law does not in these circumstances choose sides. The "winner" is determined on the basis of strength and perserverance; the law presumes either that most such disputes are fair fights or that in any event the Government has no business intervening in these matters. The underlying principle is that of laissez faire and the belief that ultimately this is in the public interest.

The intent of Congress with respect to secondary boycotts, however, was vastly different. In these cases it was believed that no longer was there a fair fight situation. The union is no longer taking on its foe directly with its own resources and muscle. In a secondary boycott the union strikes or pickets an employer who is not involved in the primary dispute so that such an employer, who is really a "neutral", will put pressure on the primary employer to make him give in to the union.

Even many who attacked the passage of the Labor-Management Relations Act understood the need for such a section. For example, Professor Archibald Cox commented at the time:

> "Banning the use of secondary strikes and boycotts as weapons of organization is primarily a prohibition against economic pressures; the interference with freedom of per-

> suasion is relatively slight since all avenues of communication except the picket line are left open. Furthermore, the measure is necessary to localize industrial disputes, thus minimizing the resulting loss to the community, and forms an important part of any labor policy based on collective bargaining between employers and representatives chosen by their employees. Discontent, unrest, and ultimately strikes, result from outside unions forcing representation upon other groups of employees -- in much the same manner as when industrial democracy is denied employers." Cox, Some Aspects of the Labor-Management Relations Act, 61 Harv. L. Rev. 1, 26-27 (1947).

This point cannot be stressed too emphatically. Congress believed that putting pressure on a neutral third party to force it to intervene on the union's behalf in the real dispute is unfair and wrong. And all the NLRB and court decisions written since the enactment of 8(b)(4)(B) have been designed to interpret and put flesh on that fundamental determination of Congress.

Providing legal protection for neutrals is a relatively simple matter when the neutral has its place of business at a location separate and apart from where the primary employer does business. There are no competing interests to weigh. There is simply no need to picket the neutral at its separate place of business and to do so clearly manifests an illegal, secondary objective.

In the situation where more than one employer is located on a work site matters get more complicated. There a balancing of competing interests is required. On the one hand, the employees of the primary employer on the site are entitled to picket their employer and reap the rewards of their picketing. On the other hand, such picketing unavoidably has considerable impact on neutral employers working at the site and frequently can be damaging to the neutral. If the employees of the primary are allowed to picket the entire work site, the employees of the neutral will probably respect the picket line and cease work for their employer. On the other hand, if the primary employer's employees are not allowed to picket the entire work site they may not get the desired result and impact of their picketing.

The two typical situations where this problem arises are illustrated by:

1. a dispute at the plant of a manufacturer where other employers are also present and performing work.

2. a dispute at a construction site where two or more employers are performing separate tasks on common premises.

In the first situation the Supreme Court enunciated the applicable principles of law in the General Electric case.[1/] In that case the Court held that where the manufacturer has established a separate gate for the other employers working on its premises the union may not picket that gate provided:

1. The work done by the men who use the separate gate is unrelated to the normal operations of the employer.

2. The work is of a kind that would not, if done when the plant were engaged in its regular operations, necessitate curtailing those operations.

The concept of relatedness was the key to the decision. In effect the court was saying that where related work is performed the technical neutral status of other employers is less important then the compelling need of the striking primary employees to get the full benefit of their picketing. Since all primary picketing situations include as a normal and traditional consequence the curtailing of deliveries and other day to day services furnished the struck employer the Court concluded that it should not insulate secondary employers working on the premises who furnish such related services from the natural consequences of the primary picketing.

1/ Electrical Workers Local 761 v. NLRB, 366 U.S. 667.

In effect, allowing the traditional results of primary picketing to prevail in such a situation was deemed more important by the court than protecting the rights of neutrals whose own operations are so closely related to those of the primary employer. In a sense the Court was saying that the neutral was less than completely neutral.

A different balance was struck by the Court with respect to employers performing unrelated work at the manufacturer's plant. The right to protection of those employers whose operations were merely incidental to the primary employer's operations was deemed superior to the needs of the picketing employees. The Court essentially determined that protection of these neutrals did not impair the ability of the picketing employees to get the expected and traditional results of their picketing.

The court's balancing of the competing interests is regarded as sensible and fair by virtually all the legal scholars who have analyzed the G. E. line of cases.

In the common situs or typical construction industry situations, however, the NLRB and the Circuit Courts have refused to apply the G. E. relatedness tests. Instead they have proceeded on the premise that the employers on a construction site are unrelated and there is therefore no need to inquire further into the nature of the work performed by the various neutrals. This result they say is compelled by the Supreme Court's decisions in 1951 in Denver Building Trades.[2/] In that case the union argued that it had the right to picket the entire construction site despite the fact that its dispute was with only one employer. Its argument was based on the premise that all work on a construction site is interrelated and that hence all employers working on the site should be treated as a single employer. The Supreme Court rejected

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[2/] NLRB v. Denver Building & Construction Trades Council, 341 U.S. 675.

this argument and held that the employers were separate and thus entitled to the protection of the secondary boycott provisions of the NLRA.

To strike the delicate balance between competing interests in common situs situations the NLRB fashioned its so-called Moore Dry Dock standards. In that case[3/] the Board set forth four criteria to determine the legality of picketing:

1. The picketing is strictly limited to times when the situs of dispute is located in the secondary employer's premises.

2. At the time of the picketing the primary employer is engaged in its normal business at the situs.

3. The picketing is limited to places reasonably close to the location of the situs.

4. The picketing discloses clearly that the dispute is with the primary employer.

It is thus clear that in common situs (construction industry) cases the Board takes the position that all neutrals are entitled to some protection but also takes the position that primary employees have certain picketing rights which must be allowed to co-exist. In Moore Dry Dock by regulating the "how" of picketing the Board sought to ascertain the intent of the picketing which in turn was considered controlling. If there was no intent to enmesh neutrals there could be no violation.

In the case of Markwell and Hartz[4/] the Board was squarely presented with a union's contention that the G. E. standards should apply in a common situs construction industry situation instead of the Moore Dry Dock standards.

[3/] Sailors Union of the Pacific, 92 NLRB 547.

[4/] Building and Construction Trades Council, 155 NLRB 319.

The Board, with the subsequent approval of the Fifth Circuit Court of Appeals, rejected this contention, relying on the Supreme Court's holding in Denver that the relationship between employers on a construction site is one of separate and independent employers. Instead, the Board continued to apply the Moore Dry Dock standards.

Twelve years after passage of Section 8(b)(4)(B), Congress had an opportunity to review its operation and the claim by the building trades unions that the Act treated them unfairly. Congress not only did not eliminate Section 8(b)(4)(B) but strengthened it by eliminating certain "loopholes" that had made the section less effective. Again, even labor supporters in Congress did not dispute the need for this. Thus, the late President (then Senator) Kennedy declared:

> "The chief effect of the conference agreement, therefore, will be to plug loopholes in the secondary boycott provisions of the National Labor Relations Act. There has never been any dispute about the desirability of plugging these artificial loopholes." 105 Cong. Rec. 16413 (Daily Ed. September 3, 1959).

Congress specifically refused to exempt the building trades from Section 8(b)(4)(B) or to reverse the Supreme Court holding in Denver Building Trades.

The Proposed Legislation

In simplest terms, S. 1479 would grant the building trades unions a significant exemption from the secondary boycott provisions of Section 8(b)(4)(B). As we read the bill, the construction trades could probably engage in the following kinds of strikes and picketing on a common situs and shut the entire project down:

1. To force a non-building trades union employer off the job. This is not limited to the subcontractor which is not unionized but would also include an employer with a contract with a union which is not affiliated with the AFL-CIO Building Trades Department. This can be done by simply claiming

that the employer is not paying union (euphemistically termed "area") wages which will for all practical purposes enable the unions to circumvent the prohibition in Section 8(b)(7)(A).

2. To prohibit the use of prefabricated material on the job site where the union has a work preservation objective.

3. To shut down industrial sites. Thus, if General Motors subcontracted its painting work to a painting contractor whose employees were not members of the AFL-CIO Building Trades Department, the employer could be struck based on the claim that the employer was not paying craft union wages or not using craft union restrictive practices. Because the industrial employer apparently may not set up gates reserved for the subcontractor's employees, the entire industrial complex could be subject to picketing and a possible shutdown.

4. To force an employer to accept its interpretation of the contract where the contract does not have a no-strike provision. It should be noted that where contracts do contain a no-strike clause, the more powerful union could merely eliminate it after expiration of the current contracts.

The real issue presented by S. 1479 is whether it would be sound public policy to override present NLRB and court interpretations of Denver Building Trades and declare, in effect, that all employers engaged in construction on a construction site are interrelated for 8(b)(4)(B) purposes.

A number of legal scholars have considered this question and, as Professor Norman Cantor of Rutgers Law School concluded after a thorough review of the authorities, they have "supported the Board's refusal to extend the related work rationale to construction industry cases."[5/] According to Professor Cantor: "The scholarly consensus is, therefore, that

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5/ Separate Gates, Related Work, and Secondary Boycotts, Rutgers Law Review (Spring, 1974) Pages 613-659.

the Board is correct in withholding such broad power from the building trades unions.

These opinions are based on the fact that because of the inherent interrelatedness of construction tasks, unions would, under the General Electric standard, be able to shut down entire projects over any and all legitimate labor disputes, no matter how insignificant.[6/]

We believe that the legal scholarship in the field is correct and we take the position that S. 1479 is unsound for the following reasons:

1. The construction unions are seeking an unwarranted increase in their present enormous power.

We believe that consideration of S. 1479 must be in the context of the times in which we live and must take into account the relative position of construction unions vis a vis other unions, their employers, and other segments of our society. A casual reading of most newspapers discloses that home building has been in a slump for several years due in large measure to skyrocketing costs of labor in the construction industry. We read about the large number of bankruptcies among the building contractors. We know, of course, about our rampaging inflation and the impact of huge wage increases on this inflation. We also are well aware of the great numbers of people either out of work or earning marginal incomes. It is in this context that the building trades unions come to you seeking greater privileges. Should you grant them these privileges? Let us see if they need them. It will be helpful, first, to look at the relationship between the construction unions and the contractors with whom they deal.

The power of the construction unions stems in large part from the nature of their collective bargaining arrangements. Typically, in major

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[6/] See Dereshinsky, "The NLRB and Secondary Boycotts", Labor Relations and Public Policy Series Rep. No. 4(1972).

metropolitan areas each trade is represented by one local union which includes nearly everyone skilled in that craft. Thus the electricians have one union, masons have another union, and carpenters yet another union. These local unions operating exclusive hiring halls are the contractor's source of skilled craftsmen in their particular craft. If a contractor, for example, wants a plumber he generally must go to the plumbers union in his area. These unions, therefore, have close to a monopoly on the skilled laborers who work in construction.

Usually each construction union negotiates a collective bargaining agreement with an association of contractors who specialize in the particular craft represented by such union. These are so-called union shops. Although there are a large number of contractors who band together for collective bargaining they are sitting across the table from a monolithic union which alone can furnish them with their necessary skilled workmen. This confers on the unions enormous leverage. Further, each "union shop" contractor in the association knows that whatever terms are negotiated apply equally to his confreres so that they will all be operating under the same wage agreement. This, of course, makes it easier to come to terms since they are all in the same boat and hopefully can pass along the wage increases to customers on an equal basis.

As a result of this situation the only real restriction on construction union wages is their own sense of self-restraint or lack of it. Let us look at some figures and see how much restraint they have shown.

It is widely recognized that construction industry earnings in general and construction industry wage settlements in particular are traditionally higher than earnings and settlements in other industries. Consider the index of average earnings in the private, non-farm economy. Using the base year 1967 as equal to 100, the index of average earnings for April, 1975 in contract

construction was 172.0; for manufacturing it was 168.6. A look at the same index over the five-year period from 1969-1974 will show that this differential in earnings between construction workers and those in manufacturing industries is fairly consistent:

	Manufacturing	Construction
1969 -	112.4	116.5
1970 -	119.4	127.2
1971 -	127.3	138.0
1972 -	135.4	146.2
1973 -	143.6	154.5
1974 -	156.0	163.3

In percentages, the wage increase for construction workers versus other workers over this five-year period can perhaps be seen more clearly: Between 1969 and 1974, wages increased in the construction industry by 40.2 per cent, as compared with only 35.2 per cent in manufacturing. In 1974 alone, the average percentage adjustment for contracts settled in the construction industries was 11 per cent, and in manufacturing, it was only 8.7 per cent.

When these percentages are translated into actual dollar figures, the contrast between the construction industry and other industries shows up even more clearly. Comparative median increases (in cents-per-hour), by economy sector, for the years 1969 - 1974 are reflected in the table below:

	1969	1970	1971	1972	1973	1974
Construction	45.2	69.5	82.2	69.8	35.7	44.6
Manufacturing	18.4	21.2	25.5	23.3	22.1	25.3

In 1975 median first-year wage increase negotiated to date in both manufacturing and nonmanufacturing (excluding construction) is 44.9 cents an hour For construction, the year-to-date median is 76.0 cents an hour. In the most recent two-week period for which we have information -- May 6 through May 19, 1975 -- the median manufacturing increase was 39.7 cents an hour; in construction the median wage gain was 85.3 cents an hour.

Illustrative of the recent settlements in the construction industry is an agreement reached in Portland, Oregon, between United Association Local 51

and the Plumbing, Heating and Cooling Contractors Association, calling for a $2.30 an hour increase in wages and fringes. This settlement was so alarming that Secretary of Labor Dunlop recently singled it out for criticism.

Finally, translated into real terms, average hourly earnings for unionized construction workers, including contract-stipulated employer payments to health and welfare, insurance, pensions, and vacation funds, came to $10.00 an hour as of April 1, 1975.

It would seem, then, that the construction unions are not now suffering under a heavy and unequal yoke. Far from it — they are actually faring much better than their counterparts in manufacturing. We therefore fail to see the need for a further expansion of their power which S. 1479 would grant them.

2. The claim of the construction unions that they are treated unequally under the law lacks merit.

Although the construction unions argue that the law as it presently stands makes them second class citizens actually the opposite is true. In fact the construction unions presently enjoy privileges and immunities not granted to other unions.

Section 8(e) of the NLRA grants to construction unions the right to enter into "hot cargo" agreements covering work at construction sites. Virtually all other unions are denied this special exemption from the law.

Section 8(f) of the Act grants special organizational and hiring hall rights to construction unions granted to no other unions.

We submit that this special treatment of construction unions did not come about by accident or happenstance. Congress believed that the construction industry had problems and needs that were unique to it and which required statutory recognition. But the fact remains that the construction unions do receive special and preferred treatment under law. How much more special treatment do they need?

3. Because of the nature of the construction industry the present NLRB and Court interpretation of Section 8(b)(4)(B) is both necessary and correct.

As just noted it is possible to contend that the nature of the construction industry requires that its unions have certain special rights above those granted to other unions. But we believe that the converse is also true; that the nature of the construction industry is also such that to apply the General Electric related work standards to it would be a major public policy mistake.

We believe that the principles enunciated in Denver and Markwell & Hartz are correct. To treat a construction situs situation the same way as a manufacturing situation would do incalculable harm. To apply the related work test is meaningless. All the other contractors will be treated as neutrals or none of them will be so treated. Either position yields unsatisfactory consequences. And this, of course, is precisely the point made by the legal scholars who have dealt with the issue.

In manufacturing situations it is possible to look at a particular piece of work performed by an outside contractor and see if it is in fact related to the normal operations of the manufacturer or not. If it is related then the contractor is unprotected and vice versa. The conclusion will depend on a precise evaluation of the facts. A case could go either way depending on those facts. Thus the entire project or plant may be shut down under some circumstances but not under other circumstances.

This would not be the case in the construction industry if the related work test is applied and it is concluded that all of the numerous construction contractors usually present on a construction job are interrelated. Every union dispute with any contractor would involve every other

contractor and would shut down the entire job. The question of whether related work was involved would have already been answered in the affirmative and unlimited picketing would automatically be allowed. This would be the result of applying the G. E. standards to construction. And this is what the drafters of S. 1479 would seek to do by legislation.

Every dispute between a union and one of many contractors or subcontractors, no matter how trivial, would be allowed to close a major building project. A dispute involving three or four employees would throw thousands of others out of work and add enormously to the costs of construction. Ultimately, these added costs would be passed on to us, the consumers.

In conclusion we believe that passage of S. 1479 is both unwarranted and unwise. Construction unions already too strong would be given a virtual stranglehold on our largest and most important industry -- construction. But the price, ultimately, will be paid by all of us.

Senator RANDOLPH. Mr. Chairman, I have appreciated the opportunity of being here for the testimony, and following it as closely as I could today.

I wish to ask your concurrence in the introduction of three guests. Would that be agreeable?

The CHAIRMAN. Of course.

Senator RANDOLPH. Michael Greer is a former member of the West Virginia legislature, from Salem, W. Va., which is the town in which I was born. He is assistant to the president of Salem College, and is the director of research and planning, and I am not sure whether he can help the Senate as he attempted to help the West Virginia legislature, but we are delighted to have you here, Mike.

And then, William Lawson is here, and he is one of the faculty members at Salem College—that is the institution from which I finally was able to graduate which is located in Salem, and he is responsible for the Title III programs. He coordinates that effort in Salem College.

Senator Williams and I and others of this committee are members of the Education Subcommittee of the full Committee on Labor and Welfare.

The third of our Salem guests is Brad Davis, and he is a major in political science at our college. He is this summer interning with Representative Mollohan of West Virginia.

I thank you, Mr. Chairman.

The CHAIRMAN. One of those gentlemen was not included.

Senator RANDOLPH. Oh, he's a member of my staff, and he is here every day, and since the record must be complete, that is Ned Massee, and he is not asking for any big increase in salary at the present time. He is working up to it.

Thank you, Mr. Chairman.

The CHAIRMAN. Very happy you are here, gentlemen.

One final addition to the record, from the Goodman training program located in the city of New York, a letter that we will include in our record:

> The conclusion is made that the construction workers deserve the same right to peacefully protest and to protect their economic advances at a construction site as do Government workers and other industrial workers of the United States.

The letter is signed by the chairman of the board of directors of R-T-P, Bayard Rustin, and the president of the institute, Mr. A. Philip Randolph.

[The full text of the quoted letter may be found in Appendix C.]

Senator RANDOLPH. Mr. Chairman, as we conclude, apparently, this hearing, have you announced publicly the hearing schedule and what is anticipated in the coming week or two?

The CHAIRMAN. Tuesday, July 15, 9:30 a.m., will be our next hearing on this bill, and that will be back home in our Labor Committee quarters, at room 4232, Dirksen Building.

Our first witness will be Andrew J. Biemiller, of the AFL–CIO, Senator Packwood, Mr. Ravens of the Steelworkers, Harry Taylor, from the Construction Employers, Mr. Vincent Apruzzese from the Labor-Relations Committee of the Chamber of Commerce, Robert Connerton, from the Laborers International Union.

That will be Tuesday, at 9:30, downstairs.

[Whereupon, at 11:55 a.m., the subcommittee was recessed.]

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS, 1975

TUESDAY, JULY 15, 1975

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

The subcommittee met, pursuant to notice, at 8:40 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams, Nelson, Javits, Schweiker, Taft, and Stafford.

Staff present: Donald Elisburg, counsel; Don Zimmerman, minority counsel; Howard Moore, professional staff member; and David Dunn, minority professional staff member.

The CHAIRMAN. The committee will come to order.

Today, the Labor Subcommittee will conduct the third and final scheduled day of hearings on S. 1479, a bill to provide reform in labor relations in the construction industry.

When I introduced this bill on April 18, I was joined at that time by Senator Javits and Senator Cranston. Since that time, we have been joined on this bill by Senators Kennedy, Ribicoff, Hartke, Schweiker, Tunney, Bayh, McGovern, Packwood, and the senior Senator from New Jersey, Senator Case.

This bill is necessary because the Supreme Court and the NLRB have held that contractors and subcontractors on a single construction job are separate legal entities for the purposes of the prohibition against secondary boycotts.

The result has been a restriction of primary activity by unions in the construction industry which was not intended by the Taft-Hartley Act.

S. 1479 is an opportunity to provide badly needed reform in labor relations in a highly diverse and fragmented industry. The need for reform has been presented to this subcommittee in previous testimony from the Secretary of Labor.

The bill has been supported by leaders of organized labor in the construction industry, and opposed by representatives of management in the construction industry.

Through all, however, the primary issues have been the impact of this bill on productivity and unemployment, and the long-range effects of the changes in law that this bill will have on labor relations in this industry.

I hope that today's witnesses will further inform the members of this committee of the real impact of this proposed legislation.

Today we will hear from a representative of the AFL–CIO. I am not sure whether Mr. Biemiller will be here.

Mr. Abel of the United Steelworkers of America will be represented by Mr. Jacob Clayman.

We will have other witnesses this morning, including Harry Taylor, president, Council of Construction Employers; Mr. Vincent J. Apruzzese of the U.S. Chamber of Commerce; and Mr. Robert Connerton of Laborer's International Union of North America.

We also expect Senator Packwood to be present this morning.

I am sure everybody here as a witness this morning has been advised of the time problem that we face because of the Senate session. We cannot meet while the New Hampshire matter is before us.

We will get right underway.

Mr. Clayman.

STATEMENT OF I. W. ABEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL–CIO, PRESENTED BY JACOB CLAYMAN, SECRETARY-TREASURER; ACCOMPANIED BY PHILIP J. DAUGHERTY, LEGISLATIVE REPRESENTATIVE

Mr. CLAYMAN. Mr. Chairman, I heard your admonition about brevity, and though it is very unlike me to be brief, I shall rise to the challenge.

Firstly, Mr. Philip Daugherty, our legislative representative, is with me.

I want to make the point clear that this testimony in reality is the testimony of I. W. Abel. Though he could not be here, he felt so strongly on this issue that he wanted it to be the words and the sentiment of the president of the industrial union department.

What I am about to read quickly and only in part will be his words and his sentiments, and I hope I can convey to the committee the sense of urgency that he feels on this issue.

In the labor movement we are as one on this important item. We represent almost exclusively industrial workers. We do not represent building tradesmen, and yet we, in the industrial union, want the same kind of rights and the same kind of protections and the same kind of practical justice that we enjoy in the industrial unions.

I want to submit, Mr. Chairman, the entire statement for the record, though I will read only portions of it.

The CHAIRMAN. The entire statement will appear at the conclusion of your testimony.

Mr. CLAYMAN. I note that the bill has bipartisan support and almost as many Republicans, if I recall, in the Senate supporting the bill as Democrats. But this is not at all unusual.

Now, I will read from a portion of the statement.

Five Presidents, commencing with President Truman, virtually every Secretary of Labor since that administration, indeed every Secretary of Labor since that administration, and uncounted U.S. Senators and Representatives have heaped such unstinting praise on predecessors of this bill that it is a source of sheer amazement to me that it has not been the law of the land for the last 20 years.

Let me quickly read the list. Presidents Truman, Eisenhower, Kennedy, Johnson, and Nixon—Secretaries of Labor Durkin, Mitchell, Goldberg, Wirtz, Hodgson, Schultz, and Brennan, and now Secretary Dunlop has spoken out.

It may well be that the chairman will remember that New Jersey Republican former Senator Alexander Smith, chairman of the Senate Committee on Labor and Public Welfare, occupying the honored seat that you now have, sponsored this bill back in 1954, when there was a Republican majority in both the Houses of Congress.

So there we have a kind of gallery of notables in American history, both on the level of the Presidency and on the level of Congress, the House and the Senate, in support of that basic principle that the building trades now ask Congress for, and yet the amazing thing, when one contemplates it, it is a little on the stunning side, that all this praise for the bill over the course of the past 20 years, we are still at the talking stage.

But I have a kind of strange feeling that we have reached finally fruition and that this session of Congress will ultimately, during this session, perhaps in the weeks ahead, grant the kind of justice that the building tradesmen deserve.

I am reading now from page 3, and I will quickly be done.

In my judgment, the *Denver Building & Construction Trades Council* decision is predicated on an elaborate fiction, namely that general contractors and the various subcontractors are so individual and separate that they must be treated as utterly different entities as far as labor-management problems are concerned.

The reality is that every building site has many subcontractors, as the chairman knows, working on the same construction job—bricklayers, carpenters, plumbers, electrical workers, et cetera. They may be working for different employers but their work functions are parts of a homogenous whole, a mutual package.

There is always a general contractor to bring together the many subcontractors to create a single result. The fact is the overwhelming number of strikes in the construction industry, the labor dispute is against the general contractors with whom the subcontractors have joined by agreement.

The general contractors may indeed be the symphony orchestra conductor, but the subcontractors constitute the symphony orchestra—brass, strings, wind instruments, percussion—all of which merge in the ultimate sound of music. They are inseparable. They are one—director and orchestra.

Obviously, this is the reality of the relationship between the general contractor and the subcontractors—the relationship between the employer, the general contractor, and the union or unions. I have more than a hunch that this is well understood and appreciated by the industry as well as by the unions.

We believe that it is an overly legalistic and artificial argument to suggest that because such employers are separate legal entities, those not immediately engaged in the specific labor disputes are so neutral and unrelated to the general contractors on the site, that the slightest possibility of damage to them should prohibit any meaningful picketing on the site by aggrieved workers.

I notice, Mr. Chairman, a release by the Chamber of Commerce that was on one of the tables this morning, and the horrendous implication is suggested, namely that if this bill becomes the law of the land, that automatically almost like pressing a button the unions will respond with a rash of strikes that will destroy the industry and the country.

I must observe that this is the kind of scare talk that does not add much to the wisdom or the understanding or the reality of the relationship between the unions and the contractors.

We have unlimited rights to picket in industrial unions. Were there more strikes after the Wagner Act than there were before?

Was there more stable relationship between employers and employees before than after?

The answer, of course, is obvious.

In the industrial unions, in the main, over the course of history, there has been an enormously stable relationship. The strikes have been by far the extraordinary exception rather than the fact.

Well, Mr. Chairman, this committee, after 20 years of debate and presentation of arguments, knows all the argumentation, and my continued discussion here will not add to it, so I appreciate the opportunity to appear here on behalf of the Industrial Union Department, calling for justice, for those who are not members of our organization, but are members of the building trades. They deserve as much as any industrial worker or any industrial union.

I want to compliment the chairman, if I may, for permitting his name to be on the bill as the chief sponsor, but that is not unusual. No one should be surprised.

This is in keeping with the chairman's understanding of solid and wholesome labor-management relations in America.

Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Clayman.

Do you see any particular additional protection running to the IUD membership from this legislation?

Mr. CLAYMAN. I do not see any additional protection. On the other hand, I do not see any detraction or elimination or subtraction, rather, of any of the rights we now have.

The CHAIRMAN. Well, you come from the pinnacle of organized labor. I was interested, as I am sure you were, in an editorial in a leading journal yesterday, the Wall Street Journal, and it suggested that the AFL–CIO chieftains dutifully sign statements of support, but usually call in sick when the time comes to testify.

Well, you are a high, high official in IUD of the ALF–CIO, and you look very healthy and very fit, and I will say you were here before the chairman was this morning. The meeting was called for 8:30, and I am told you were ready to go at 8:20.

Mr. CLAYMAN. Let me make the point again so it will not be misunderstood.

Mr. Abel is not here, not because he is sick, but because he has obligations and commitments that did not conform with the schedule of the committee.

The mere fact that he insists that his name be on the testimony rather than mine is evidence of the solemnity of his dedication to the passage of this bill.

So the Wall Street Journal is a great paper, incidentally. I read it most every morning when I have the time. But please do not ask me to comment on its editorial policy.

The editors must live in a different world than the reporters. The reporters do a great job. But the editors, strangely, have their feet cemented in a time even before my birth, and that is a long time ago.

The CHAIRMAN. I missed that last point.

Mr. CLAYMAN. I was suggesting, Mr. Chairman, what I think is the obvious.

It is a great paper, doing a splendid job, except the editors are in a separate kind of world that is not close to what I believe to be the American modern realism.

The CHAIRMAN. Well, I agree with you in your characterization of a great paper. I agree with the rest of your statement, too.

But here is the sort of thing that greatly disturbs me.

When you have a journal of opinion that is respected, and then they are wrong, not in opinion—we will not judge them on that, everybody is entitled to opinion—but just wrong in the factual situation.

Let us consider this statement in the editorial yesterday.

> If the United Auto Workers has a legitimate beef with General Motors, it can throw up a picket line and close down the plant. Why shouldn't the roofers union, if it had a beef with a contractor repairing the roof on a GM plant, be allowed to throw up a picket line and shut everything down?

Well, you see it is a question of not saying that that is what this bill would permit. But anybody not deeply involved would come to the conclusion that that is what this bill would permit—the picketing of a roofing contract on a General Motors roof to shut down the General Motors assembly line. That is not it at all.

Mr. CLAYMAN. Including the main gates.

The CHAIRMAN. Yes.

That is the sort of thing that gets everybody emotionally involved. They say, you mean to tell me that this dispute between the roofing contractor and his workers can shut down all of General Motors?

Mr. CLAYMAN. Mr. Chairman, I am assuming that the employers in this situation have not made that argument. They know better than that. I am sure the record does not show any scintilla of argument on that particular point.

The CHAIRMAN. Nothing.

Mr. CLAYMAN. And, of course, it is erroneous.

The CHAIRMAN. It certainly is.

Mr. CLAYMAN. And if anybody had been watching at all, and this surprises me because they do a good reporting job, they would have known that the Industrial Union Department and I. W. Abel had appeared, both on the House side and now on the Senate side, which throws the obvious lie to the suggestion that the rest of us outside the building trades are dragging our feet on this. This is an utter misrepresentation unless it is sheer ignorance.

And I do not know which.

The CHAIRMAN. Thank you very much.

Mr. CLAYMAN. Thank you, sir.

The CHAIRMAN. You cooperated fully, and we appreciate it. Your testimony was most constructive.

Mr. CLAYMAN. Thank you.

[The prepared statement of Mr. Abels as submitted by Mr. Clayman, follows:]

Statement of I. W. Abel, President
Industrial Union Department, AFL-CIO
before the
Subcommittee on Labor of the Senate
Committee on Labor and Public Welfare
on S. 1479

July 10, 1975

My name is I. W. Abel. I am the President of the Industrial Union Department, AFL-CIO. I am pleased to appear in behalf of the Industrial Union Department in wholehearted support of S.1479.

The issue before your committee is not new. So many notables, both democrats and republicans, -- five presidents commencing with President Truman, virtually every Secretary of Labor since that administration, uncounted U.S. Senators and Representatives, have heaped such unstinting praise on predecessors of this bill that it is a source of sheer amazement to me that it has not been the law of the land for the last twenty years.

Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon -- the list is longer -- Secretaries of Labor Durkin, Mitchell, Goldberg, Wirtz, Hodgson, Schultz and Brennan, and now I understand, in principle, Secretary Dunlop have spoken out for legislation such as your bill, Mr. Chairman, but there is even more -- New Jersey Republican, former Senator Alexander Smith, Chairman of the Senate Committee on Labor and Public Welfare in 1954, when there was a Republican majority in both houses of Congress, fathered a bill similar to the measure before this committee. Equally interesting and intriguing is the fact that such disparates as Senator John F. Kennedy and Senator Prouty were both for this remedial action in 1959. So, Mr. Chairman, historically you have had a lot of company on this issue not only from your own party but from Republicans as well.

The hard fact remains, however, that the building and construction tradesmen still have not been given the protection so many in the highest places in the land have so strongly and eloquently recommended these past 21-years. Hardly ever in the annals of Congress have so many important and influential people uttered so many warm words of praise and support over so long a period for a sound and honest legislative idea without that idea being translated into law. The time for verbiage surely is over, the time for action is now long overdue.

The Taft-Hartley Act of 1947, of course, placed severe restrictions on the types of concerted activities in which workers may engage, including a broad prohibition on secondary boycotts. Then, an unduly harsh limitation on the right of construction workers to strike and to picket was imposed as a result of the decision of the United States Supreme Court interpretating the secondary boycott prohibition. (NLRB v. Denver Building and Construction Trades Council, 341 U.S. 675). Briefly, that case held that a union which objected to a non-union electrical contractor working at a construction site, committed an unfair labor practice by picketing the entire project because such picketing induced the employees of the other contractors to stop working.

As I have indicated, even supporters of Taft-Hartley's broad prohibition on secondary boycotts have recognized that this particular application of the prohibition deprives the workers affected by it of any meaningful right to picket. Why should a union not be permitted to picket the construction project where a labor dispute is in progress, just as a union may picket an industrial plant where a labor dispute exists? Are not all construction contractors working on a single job or project engaged in a single venture very similar to an industrial plant?

In my judgment, the Denver Building and Construction Trades Council's decision is predicated on an elaborate fiction, namely, that general contractors and the various subcontractors are so individual and separate that they must be treated as utterly different entities as far as labor-management problems are concerned. The reality is that every building site has many subcontractors working on the same construction job -- bricklayers, carpenters, plumbers, electrical workers, etc. They may be working for different employers but their work functions are parts of a homogenous whole, a mutual package.

There is always a general contractor to bring together the many subcontractors to create a single result. The fact is in the overwhleming number of strikes in the construction industry, the labor dispute is against the general contractors with whom the subcontractors have joined by agreement. The general contractors may indeed be the symphony orchestra conductor but the subcontractors constitute the symphony orchestra -- brass, strings, wind instruments, percussion -- all of which merge in the ultimate sound of music. They are inseparable, they are one, director and orchestra.

We believe that it is an overly legalistic and artificial argument to suggest that because such employers are separate legal entities those not immediately engaged in the specific labor disputes are so neutral and unrelated to the general contractors on the site that the slightest possibility of damage to them should prohibit any meaningful picketing of the site by aggrieved workers.

The essential reality is that regardless of the separate legal entity thesis, there is so much mutuality of interest on the same building site that picketing is essentially primary rather than secondary in its intent, purpose and result in regard to all of the employers on the premises.

The heart of the matter is that the Denver Building Trades Council's decision is aimed at the basic right of the construction workers to strike. As long as the Denver Building Trades Council's decision is permitted to stand, for all practical purposes, strikes at building sites by building tradesmen will have been eliminated as a meaningful instrument in labor-management relationships. This will do grievous injury to our democratic system as well as to those workers directly involved. We find no reason whatsoever to treat building and construction tradesmen different than virtually all other American workers in our society. Industrial workers possess the right to strike and picket the work site. Building and construction tradesmen need and are entitled to this same priceless American expression of basic freedom.

We earnestly urge the quick approval of this Committee of S.1479 which is specifically aimed, as were previous bills, at correcting this particular inequity. (See testimony of Willard Wirtz, Secretary of Labor, Hearings before the Special Subcommittee on Labor of the Committee on Education and Labor, House of Representatives 89th Congress, First Session (1965), pages 2-12). Its time has come.

The CHAIRMAN. Senator Packwood is here. He is a cosponsor. You made a significant contribution as a member of this committee.

STATEMENT OF HON. ROBERT PACKWOOD, A U.S. SENATOR FROM THE STATE OF OREGON

Senator PACKWOOD. Mr. Chairman, as a young lawyer, I practiced labor law, and nothing but labor law, for 4½ years. I was an associate in a large law firm in Portland, Oregon, assigned to the partner who handled labor relations.

During those 4½ years I read the Labor Relations Reference Manual advance sheets every week. I assiduously studied LRRM's labor arbitration reports. I knew every significant National Labor Relations Board decision and every major arbitration decision as it was handed down.

I have negotiated contracts, arbitrated grievances under existing contracts, tried National Labor Relations Board cases, appealed those decisions to the courts, and lobbied at the State legislature in behalf of our clients.

All of our clients were management, either individual companies or employer trade associations.

Included among our clients were numerous contractors who were concerned with situs picketing. I know the details of the situs picketing dispute well. I long ago reached the conclusion that situs picketing should be allowed. Today is the first day since coming to the Senate in 1969 that a moment to testify in favor of situs picketing has presented itself.

There are two bases upon which you could legalize situs picketing. One would be to rewrite the labor laws so that secondary boycotts are legal. I do not think situs picketing in the construction industry is a secondary boycott. But if you legalize secondary boycotts, you surely would cover situs picketing and a lot of other activities as well.

Secondary boycotts were legal for a few years, specifically from the *Hutcheson* case in 1941, *United States* v. *Hutcheson*, 312 U.S. 219 (1941), until passage of the Taft-Hartley Act in 1947 secondary boycotts were clearly legal. Despite their legality for 6 years, civilization did not collapse.

As a matter of fact, great music continued to be composed, great books continued to be written, and we won the greatest war in the history of man while secondary boycotts were legal. They are still legal today in the agricultural industry because it is not covered by the National Labor Relations Act.

Despite secondary boycotts in the past years in the agricultural industry, involving lettuce and grapes, we still eat salads, devour table grapes and drink wine.

But I will not dwell further on the merits or demerits of secondary boycotts, because it is highly—it is highly unlikely that this Congress is going to legalize secondary boycotts anyway.

So, laying aside any reference to secondary boycotts, let us get down to brass tacks.

Situs picketing should be legal under existing law. In my mind the courts and the National Labor Relations Board have misconstrued existing law to prohibit situs picketing. Therefore, we should rewrite

the present law to remedy the misinterpretation. In so doing, we are not legalizing secondary boycotts.

To have a secondary boycott, you must have a primary employer, a secondary employer who is genuinely independent and picketing. While, in law, a prime contractor and a subcontractor are separate, in fact they are so related on a jobsite, and a prime contractor has so much control over the subcontractor, that the legal fiction should be overlooked and, for purposes of picketing at the site, they should be regarded as one.

As an aside, Mr. Chairman, you might take a look at Constructor, which is a publication of the American General Contractors, listing all contracting associations in this town. Just pick any town, any State, and you can see that all kinds of contractors, generals, subs, plumbing, otherwise, belong to the same trade association. It is very good evidence that, indeed, they are one as far as their interests are concerned, regardless of whether or not they may be a prime or a sub or have some other status.

By statute or case law, we have made exceptions in the past. We recognized the intertwining of legally separate entities in the apparel industry and said 8(b)(4)(B) did not include in the definition of "any other person" "any person in the relation of jobber, manufacturer, contractor or subcontractor, working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry."

Judicially in the *General Electric* reserved gate case, *Local 761, International Union of Electrical, Radio, and Machine Workers, AFL–CIO* v. *Labor Board*, 366 U.S. 677 (1961), we said that, in manufacturing, a subcontractor is not immunized from the labor dispute between the manufacturer and his employees, if the work performed by the subcontractor is integrated into the normal operations of the manufacturer.

For reasons that I cannot fathom, however, we have reached a contrary conclusion in the construction industry, and have said that a subcontractor who performs work integrated into the normal process in the construction industry is immunized from the labor dispute between the prime contractor and his employees. There seems to be no practical justification for this difference.

In 1959, Congress recognized the peculiar nature of the construction industry by exempting that industry from the so-called hot cargo prohibition contained in the Landrum-Griffith Act.

Despite the general ban on hot cargo agreements, the construction industry was exempted and the law expressly provides that:

> Nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry, relating to the contracting or subcontracting of work to be done at the site of construction, alteration, painting, or repair of a building, structure, or other work.

Under any rational benchmark, legislative or judicial, the construction industry should be realized for what it is, an integrated operation which should be subject to the same rules of labor law that any other integrated operation is, regardless of whether owned by one or more companies.

I therefore respectfully ask this committee to enact S. 1479 as it is, and to give to the building trades unions nothing more than the same right industrial unions now have.

The building trades unions are not asking for a "leg up." They are not asking for a superior preference. They are asking merely for equality.

Passage of this bill would achieve that.

I also would like to have inserted into the record of this hearing, Mr. Chairman, a letter of support for this bill from Oregon's Columbia Pacific Building and Construction Trades Council, AFL–CIO.

[The material referred to follows:]

Oregon State
Building and Construction Trades Council
PORTLAND LABOR CENTER
PHONE 224-1828
AFFILIATED WITH BUILDING TRADES DEPARTMENT AFL-CIO
201 S.W. ARTHUR STREET, PORTLAND, OREGON 97201

July 7, 1975

Honorable Senator Robert Packwood
State House
Washington, D.C.

Dear Senator Packwood:

We have been advised three days of hearings are scheduled to commence before the Labor Sub-committee of the Senate Committee on Labor and Public Welfare beginning July 9, 10, and 15, 1975.

In April you were sent a copy of the Resolution which was adopted at our Oregon State Building and Construction Trades Council Convention wherein we reaffirmed our position for the repeal of the "situs picketing" section, 8 (b) 4 (b) of the Taft Hartley Act.

This long pending legislation is vitally important to the Building Trades crafts. There is no reason why the craft unions should not be treated equally.

The National Building Trades Department is attempting to line up as many co-sponsors for this legislation as possible. We respectfully request that you join Senator Harrison Williams in support of this Bill. We would also request that you use your best efforts for a favorable vote with the Senators that you know on the Labor Committee and Sub-committee.

Thanking you in advance for your help in regards to this important legislation, I remain,

Respectfully yours,

OREGON STATE BUILDING AND
CONSTRUCTION TRADES COUNCIL

Robert L. Stanfill, Exec. Secy.

RLS:mb
opeu #11
afl-cio
cc: Building Trades Dept.

224-1828
Commerce
9-281

Columbia-Pacific

EARL B. KIRKLAND
Executive Sec.-Treas.

BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO
Affiliated with Building Trades Department, AFL-CIO

Room 304, Portland Labor Center • 201 S. W. Arthur St. • Portland, Oregon 97201

RESOLUTION

WHEREAS, the Columbia Pacific Building and Construction Trades Council and their 44 affiliates have for twenty six years been denied by an interpretation of the NLRB the same right to peacefully picket at their employment site as is now accorded unions in other industries in a labor dispute, and

WHEREAS, this erroneous interpretation of Section 8 (b) (4) (b) of the Taft Hartley Act did not take into account the unique relationship between general contractors and subcontractors in the construction industry, wherein said general contractors are entirely responsible for their sub-contractors from the bidding stage to completion of a project, and

WHEREAS, General Contractors have used this technicality in the Law to establish substandard wages and conditions and fatten their own bankrolls at the expense of the worker, and

WHERAS, the only way to bring to an end this unscrupulous practice is to repeal the situs picketing section of the Taft Hartley Act, and make the General Contractor responsible for his subcontractors on a given project, and

WHEREAS, H R 5900 is now scheduled for hearings to commence before the Labor Sub-committee of the House Committee on Education & Labor, now therefore be it

RESOLVED: That the Columbia Pacific Building and Construction Trades Council, AFL-CIO reaffirm our position in favor of the repeal of Section 8 (b) 4 (b), of the Taft Hartley Act, and go on record unanimously in support of H R 5900 relative to same, and be it further

RESOLVED: That we respectfully request that you sincerely join with Congressman Frank Thompson in co-sponsoring H R 5900.

Respectfully yours,

COLUMBIA PACIFIC BUILDING AND
CONSTRUCTION TRADES COUNCIL

Earl B. Kirkland, Executive Secy.

224-5024
224-1828
Commerce
9-261

Columbia-Pacific

EARL B. KIRKLAND
Executive Sec.-Treas.

BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO
Affiliated with Building Trades Department, AFL-CIO

Room 304, Portland Labor Center • 201 S. W. Arthur St. • Portland, Oregon 97201

July 9th, 1975

Honorable Senator Robert Packwood
Senate Building
Washington, D.C.

Dear Senator Packwood:

I have been advised that S 1479 is going to be heard before your Committee in the very near future.

Attached is a copy of a resolution unanimously approved by the Columbia Pacific Building and Construction Trades Council which is self explanatory.

Thanking you in advance for any favorable support shown regarding S 1479.

Respectfully yours,

COLUMBIA PACIFIC BUILDING AND
CONSTRUCTION TRADES COUNCIL

Earl B. Kirkland

EBK:mb
opeu #11
afl-cio

Earl B. Kirkland, Secretary

The CHAIRMAN. Excellent statement, Senator Packwood.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. I might say that it was more than helpful. It is very necessary in our deliberations.

I detected emphasis added in one of your last statements. As you said, you support the reporting of this bill favorably as is. I think the emphasis was on "as is."

There are amendments that have been suggested.

Have you had an opportunity to consider those?

Senator PACKWOOD. I have. I saw the bill that the Senate subcommittee has sent out. I read Dr. Dunlop's testimony. I do not agree with the exceptions in his testimony.

My preference would be that we report out a bill without the two exceptions that the House has named.

The CHAIRMAN. If the committee, in its wisdom, did include the 10-day provision and the national union's opportunity to pass on a local strike, would this—I will not ask you for a hard-and-fast answer—do you think this would militate against your support of the bill?

Senator PACKWOOD. I would support it with those amendments. I would prefer they not be in there.

But, in my mind, this is an unfair situation that has existed too long, and I would accept a bill with those amendments rather than no bill at all, or voting no on the bill with those amendments.

The CHAIRMAN. Clear, strong, very helpful statement.

Senator PACKWOOD. Thank you.

The CHAIRMAN. We appreciate it.

Senator Stafford.

Senator STAFFORD. Thank you, Mr. Chairman.

I have no questions.

I arrived in time to hear my distinguished colleague, Senator Packwood's endorsement of the bill, and I guess that was the important part of what he said. I appreciate his being here.

Senator PACKWOOD. Thank you.

The CHAIRMAN. Next we have the director, Department of Legislation, American Federation of Labor and Congress of Industrial Organizations, Mr. Andrew J. Biemiller, to join us.

We appreciate your appearance this morning on our final scheduled day of hearings on S. 1479, a bill that, after 20 years, seems to have a full head of legislative steam.

Senator STAFFORD. Mr. Chairman, before Mr. Biemiller begins, I know the Senate set a new record in attempted cloture votes recently.

My own experience which has probably been shared by many other Senators, I set a new record, I find this morning six of the subcommittees I serve on are all meeting from 8 o'clock through till 12.

The CHAIRMAN. We are honored that you chose us.

You should also be honored, Mr. Biemiller.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY LAURENCE GOLD, SPECIAL COUNSEL, AFL–CIO

Mr. BIEMILLER. I am quite honored to have an old friend show up.

Mr. Chairman, my name is Andrew J. Biemiller. I am accompanied by Mr. Laurence Gold, who is special counsel for the AFL–CIO.

I am the legislative director of the American Federation of Labor and Congress of Industrial Organizations. I am here today to urge the prompt enactment into law of S. 1479. The policy statement of the AFL–CIO's Executive Council, dated May 5, 1975, supporting that legislation is attached to my testimony. That statement was unanimously adopted by the Federation's vice presidents, who represent every segment of the labor movement.

S. 1479 defines the scope of the right of building tradesmen to engage in peaceful picketing and allied activity at a site where two or more nominally separate employers are present during a lawful labor dispute with one of those employers. The time for a legislative redefinition of that right is plainly due. Indeed, it is long past due.

The issue addressed by S. 1479 is hardly a new one. The problem it solves came to light immediately after the Taft-Hartley amendments added a list of union unfair labor practices to the National Labor Relations Act. The most complex of these was the subsection 8(b)(4) prohibition of the secondary boycott, in an early series of decisions, the National Labor Relations Board, while still in the process of orienting itself to its vast new responsibilities, determined that where employees have a labor dispute with one nominally separate employer at a building site, any peaceful picketing or allied activity directed at securing the support of the employees of other employers working at that site is unlawful. That view of section 8(b)(4) was accepted in the *Denver Building Trades* case decided in 1951 (341 U.S. 675).

Denver Building has been the subject of congressional review on a number of occasions. The result has been that over the past 20 years, four Presidents of the United States, seven Secretaries of Labor, and numerous members of both parties in Congress—including Senator Alexander Smith, Republican of New Jersey, who, when he was chairman of this committee, introduced a precursor to S. 1479—have stated their support for legislation along the lines of the bill now before this committee.

In 1959, when Congress was considering the legislation which, in its final form, became the Landrum-Griffin Act, a proposal to amend section 8(b)(4) so as to overrule *Denver Building* was introduced by the then Senator John F. Kennedy, and supported by members of this committee, such as Senator Winston Prouty of Vermont, on the Republican side of the aisle. You will recall, I am sure, that the addition of such a provision in the bill was a major issue before the Conference Committee, and that only a threatened point of order prevented that committee from agreeing to its inclusion. Again, throughout the sixties, efforts were made in Congress, with the approval of the administration, to secure the passage of legislation that would restore to building tradesmen the full right to strike and picket.

The bipartisan consensus that has emerged was aptly stated by President Eisenhower. In 1954 and again in 1956 and 1958 he recommended:

> That the [National Labor Relations] Act be clarified by making it explicit that concerted action against an employer on a construction project who, together with other employers was engaged in work on the site of the project will not be treated as a secondary boycott.

The reason for that consensus is easily stated. *Denver Building* transformed the protection of truly neutral employers that the Congress had intended to enact into a protection for employers closely allied with each other.

This expansion of section 8(b)(4) has subverted Congress' intent, stated in section 13 of the act, to preserve the right to engage in traditional primary activity. Everyone who knows the construction industry knows that the operations on a job site are highly interdependent and that the assignments to each contractor are closely coordinated. In a most recent decision, the U.S. Court of Appeals for the Seventh Circuit stated:

> On a multi-employer construction site it is the general contractor who contractually controls the worksite. (*Anning-Johnson Co.* v. *OSAHRC*. (Nos. 74–1381 and 1382; May 27, 1975).)

Thus, *Denver Building* rests on an untenable fiction—that the general contractor and his subcontractors are disinterested strangers, one to the other. The reality is that the work of all those at a single construction site is intimately and inextricably interrelated.

Moreover, by allowing the form of business organization, a matter within the employer's sole control, to determine the right of building tradesmen to strike and picket, that decision allows one side to a controversy to arrange its affairs so as to give itself the maximum advantage. Employers have seized the opportunity presented with alacrity. The result of their maneuvers is that building tradesmen have, in practical terms, been totally deprived of their right to strike and picket to protest nonunion conditions, and have been required to disregard their common interests and break each other's strikes.

In sum, the first and more than sufficient argument for S. 1479 is that *Denver Building* has perverted the congressional scheme embodied in the secondary boycott provisions. But that does not exhaust the case for a legislative overruling of that decision as well as the decisions that rest upon it.

Ten years after *Denver Building*, the Supreme Court decided a section 8(b)(4) case that arose at an industrial plant. In that case, the employees of General Electric's Louisville, Ky., plant struck the company. In support of their strike, they picketed an entrance reserved for employees of independent contractors also working at that site. The NLRB, following its approach at the time to all cases involving two or more employers working at a single site, held the picketing unlawful under section 8(b)(4). The Supreme Court reversed (*IUE* v. *NLRB* (General Electric), 366 U.S. 667).

Justice Frankfurter stated that "the key to [this] problem" is to recognize that "appealing to * * * employees [of third persons] whose tasks aid the [struck] employer's everyday operations" is "traditional primary activity" expressly protected by the Act, and that such appeals are unlawful only when directed at "workers [em-

ployed by third persons] * * * performing tasks unconnected to the normal operations of the struck employer * * *."

Obviously, *General Electric* states a different understanding of section 8(b)(4) than that adopted in *Denver Building. General Electric* correctly captures the congressional intent—first, by distinguishing between truly neutral employers—those performing tasks unconnected to the normal operations of the struck employer—and employers who are aiding the struck employer; and, second, by affording protection only to the true neutrals. That being so, the NLRB should have given the rule stated by Justice Frankfurter universal application. This, it has refused to do. In cases rising at building sites, the NLRB has held fast to the discredited doctrine stated in *Denver Building.*

Thus, at the present time, the NLRB applies different rules of law depending on the industry in which the labor dispute arises. Nothing the Congress has ever said or done justifies such a patent inequity. The law as it stands is abhorrent to the fundamental precept of equal justice under law.

In its leading decision in this area—*Markwell & Hartz*, 155 NLRB 319—the NLRB argued that application of *General Electric* across the board would require the overruling of a prior precedent. The labor movement has no objection to the principle of adhering to precedent. Indeed, the country would be well served if the NLRB and the courts, as presently constituted, would pay even-handed respect to that principle. The situation today is that past precedents are respected when they support the employer position.

But administrative and judicial decisions on statutory questions do not bind the Congress. The entire legislative authority rests with this branch of the Government, and the administrative agencies and the judiciary have the subordinate role of carrying out the Congress' mandate. Where it is apparent that those entrusted with the task of administering the law have made a major mistake that creates a plain inequity, and where it is also apparent that the administrative agency is unwilling to fulfill its duty to correct that mistake, it is time for the Congress to exercise its prerogatives. That is the situation before you, Mr. Chairman, and that is why we seek the enactment of S. 1479.

If the Congress does not make its will know where all those conditions are present, it undermines its own authority. The inevitable result of inaction is that administrative and judicial activists feel greater freedom to make their own policy and less compulsion to follow the Congress' policy. The labor movement has historically regarded that as a very serious threat to the legal system. For, experience has demonstrated that only the Congress has the capacity to establish the terms on which labor-management relations should be conducted. The late highly respected Justice, John M. Harlan, correctly characterized "judge made" labor law as "free wheeling judicial exercises * * * based on self-mesmerized views of economic and social theory * * * and on statutory misconstructions." (*Trainmen* v. *Terminal Co.*, 394 U.S. 268).

In his testimony before the House Subcommittee on Labor Management Relations on H.R. 5900, the companion to S. 1479, AFL–CIO President George Meany, on the basis of past experience, made the following predictions as to the nature of the opposition:

> With very few exceptions the only opponents of legislation to correct *Denver Building Trades* have been the anti-union employers who benefit from the re-

strictions on the basic right to strike and picket presently imposed on the building trades alone. To this point through reams of misleading propaganda and a series of delaying tactics and procedural maneuvers, they have been able to forestall action. While they have proved adept at securing delay and obscuring the single point at issue they have never shown any ability to state valid arguments for their position. I do not mean to blame them for failing to address the merits of the case. For the simple fact is that there are no arguments for their position. While there is a natural tendency to suppose that when a debate over a legislative proposal has continued for a period of time there must be some substance on both sides, that supposition is unsound in this instance.

Now that we have had the benefit of the hearings on the House side, I believe it will be valuable, Mr. Chairman, to join the issue before you by reviewing our position and the employers' responses.

The essence of the legal argument for S. 1479 I have made is: That section 8(b)(4) is intended to protect "neutral" employers only; that in the *General Electric* case the Supreme Court held that employers who "aid the struck employer's everyday operations" at the site where the struck employer is working are not "neutrals;" that all of the employers on a construction site are engaged in a single interrelated project in which the operations performed by any one employer aid and, indeed, are absolutely necessary, to the performance of the other employers; and, finally, that there is nothing to suggest that Congress intended, in enacting section 8(b)(4) to adopt a different definition of neutrality for manufacturing and construction sites.

None of the employers disagreed with the first point in this logical chain. Indeed, the National Association of Manufacturers stated that the reason for enactment of section 8(b)(4) was that:

> Congress believed that putting pressure on a neutral third party to force it to intervene on the union's behalf in the real dispute is unfair and wrong.

The same is true with regard to the proper reading of *General Electric*. In agreement with us the NAM describes the *General Electric* principle as follows:

> The concept of relatedness was the key to the decision. In effect, the court was saying that where related work is performed, the technical neutral status of other employers is less important than the compelling need of the striking primary employees to get the full benefit of their picketing.

And, the employers accept the validity of the *General Electric* analysis. The NAM notes:

> The court's balancing of the competing interests is regarded as sensible and fair by virtually all the legal scholars who have analyzed the G.E. line of cases.

Further, and most significantly, the employers freely concede, and again I quote the NAM:

> The inherent interrelatedness of construction tasks * * * under the *General Electric* standard.

Finally, the employers place exclusive reliance on the procedural snarl that aborted the legislative overruling of *Denver Building* in 1959, and their success in preventing a vote on subsequent attempts to enact the predecessors of S. 1479, as support for the proposition that Congress intended that employers who would not be considered neutrals when working at a manufacturing site would enjoy status at a construction site.

Nevertheless, the employers' ultimate contention, in the words of the Associated General Contractors, is that S. 1479 would "legalize

secondary boycotts." But, the foregoing demonstrates that applying neutral principles the employers' own statements lead to the conclusion that S. 1479 legalizes primary activity heretofore wrongly labeled as secondary. While the employers talk the language of secondary boycotts, they have been totally unable to state any legal argument for the proposition that Congress intended construction industry common situs picketing to be within section 8(b)(4), or to refute the arguments advanced above that demonstrate that such picketing is primary.

The boldest admission of their failure is the following summary by the NAM of its position:

> We believe that the principles enunciated in *Denver* and *Markwell & Hartz* are correct. To treat a construction situs situation the same way as a manufacturing situation would do incalculable harm. To apply the related work test is meaningless. All the other contractors will be treated as neutrals or none of them will be so treated.

I submit, Mr. Chairman, that if we put this statement into plain English what it says is that the proper legal test for determining who is a neutral—that stated in *General Electric*—is meaningless in the present context because it leads to the conclusion that contractors on a single construction site are not neutrals, a result the NAM does not like. That is not a demonstration that the activity outlined in *Denver Building* is secondary. It is a plea for the regulation of primary activity.

This is made clear when the NAM states, for example, that if S. 1479 is enacted, building trades unions could "force an employer to accept its interpretation of the contract where the contract does not have a no-strike provision." What is wrong with that? As we understand the law, nothing at all. The very purpose of section 13 is to preserve the right to strike and picket unless the act specifically makes the picketing unlawful. And so long as there is no provision for arbitration and no contractual agreement not to strike, there is nothing unlawful about picketing to protest an alleged breach of contract.

This example underlines the point that the NAM's real objection to S. 1479 is that, at present, the building trades have a theoretical right to engage in lawful primary picketing that is of little or no practical value because of *Denver Building*, and that S. 1479 will return to the trades a meaningful right to protect their interests through peaceful primary activity.

Precisely because their position has no mooring in the law of secondary boycotts, the employers are forced to rely on far-ranging policy justifications for their opposition. I wish to stress once again that these justifications are put forward to limit activity which the employers have all but conceded in primary. While the employers may have forgotten, I know this committee, in evaluating these arguments from policy, will remember that the Congress has been as reluctant to limit true primary activity as it has been to sanction true secondary boycotts.

Fortunately, it is not necessary for the AFL–CIO to rebut the employers' arguments. By and large, one or the other of them has already done the job for us.

The dominant theme of the employer testimony has been that the construction unions are seeking an unwarranted increase in their

present enormous power. The enormity of that power can be most accurately gaged by the testimony of James D. McClearly, chairman of the board of the Morrison-Knudson Co., who appeared on behalf of the Associated General Contractors and stated that the amount of construction done by nonunion firms had doubled in the last 15 years. In large part, this has come about because the building trades have had both hands tied behind their backs by *Denver Building.*

Moreover, Philip Abrams, president of the Associated Builders and Contractors, stated flatly that enactment of S. 1479 will not increase union power, it will decrease it:

> We have alluded to what we know will be the results of this bill on the construction industry. The union contractor will be hit hardest, his time to complete a project and his costs will go up and he will further lose in his struggle to remain competitive and AFL building tradesmen will lose more employment.

Given what Mr. Abrams knows, the complaints of those who fault S. 1479 as prounion have a hollow sound.

The employers also argue that *Denver Building* is defensible because the building trades have been given privileges and immunities not granted to other unions in section 8(e) which permits onsite no subcontracting agreements and in section 8(f) which permits prehire agreements. Their reasoning is obscure, but I take it the theory is that since the Congress has determined to treat the construction industry differently from others in certain respects, the courts have the authority to treat that industry differently in others, even though that was not and is not Congress intent. In light of what I have already said, I do not believe it is necessary for me to stress that this theory begins from a wholly unacceptable premise of the judicial authority.

Moreover, of course, the question here is whether common situs picketing is a secondary boycott or primary activity. The true relevance of the construction industry proviso to section 8(e) is that it is a congressional recognition that all contractors in a single site are closely related. Thus, on the merits, that provision suggests the very reform we seek here.

Two of the favorite themes of the supporters of *Denver Building* are that legislation, such as S. 1479, will drive up wage rates and will harm minority employees.

But, S. 1479 is not a bill to increase wage rates. It is intended to correct a longstanding injustice on a matter of principle and to let the chips fall where they may. That is all the labor movement asks.

Secretary of Labor John Dunlop is probably the leading student of the construction industry. During the hearings last month on H.R. 5900, and in response to questions posed by the House committee, he stated that that bill, whose substance parallels S. 1479, would not affect the structure of wages in the industry. I think the committee should be, and will be, more interested in Dr. Dunlop's views than in self-serving statements from antiunion employers.

The AFL–CIO has long been a forthright champion of civil rights. Out commitment is attested to by our support of title VII's regulation of the labor movement. I do not remember the employers who show such concern about minorities when legislation to overturn *Denver Building Trades* is introduced, helping us pass title VII in 1964, or helping us strengthen title VII in 1972. Their true interest is in helping themselves by restricting the rights of all workers regardless of race,

creed, or color. Even though this is so, I commend you, Mr. Chairman, for adding a subsection to S. 1479, making it plain that the bill does not sanction picketing activated by a discriminatory purpose. That step assures minority rights and removes a wholly irrelevant issue.

The AFL-CIO calls for prompt enactment of S. 1479.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Biemiller. A very comprehensive, very useful statement from the AFL-CIO.

We are short on time so, therefore, I would just like to refer to a lot of testimony that came to us last week from witnesses in opposition to the bill. They said that the employment of union construction workers results in lower productivity. That was given as a flat statement.

I asked them to give me some documentation, and they said it would be forthcoming.

We will be waiting for it, I believe, a long time.

They also said that construction unions are a significant cause of high unemployment in the construction industry.

First, on this lower productivity put at the doorstep of union construction workers, what is your comment?

Mr. BIEMILLER. I have never seen any evidence that would substantiate such a statement.

On the contrary, as you probably know, it is the building trades unions that have produced the most high-skilled workers in the country and, in most contracts, they permit any employer to fire any employee who does not measure up to standards. So I cannot understand the basis of that statement.

The CHAIRMAN. It has been my experience that it is generally union practice to incorporate training programs.

Mr. BIEMILLER. Practically every worker has gone through either a lengthy apprenticeship program or, in some instances, has passed a satisfactory test to give him journeyman status. You are quite right. They are the most highly skilled and trained workers that we have anywhere in the country.

The CHAIRMAN. Senator Javits.

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Chairman, we have tried to pass this bill for many, many years, and it is high time that we succeeded, and the fact that it has become such an old sore is even more reason why we ought to press the matter.

It has just been kind of taken for granted that every once in a while we stage a drive to deal with *Denver Building Trades* case and then we will forget about it when something else comes along to distract us.

I like the *Denver* analysis with *GE*. I think it is well taken and well stated. When we argue this case on the floor of the Senate, we must be thoroughly prepared with respect to the law developed by the Supreme Court.

Second, which I think also is very important, I would like to see a chart, if you could prepare one and give it to us for the record, of the rise in nonunion construction activities even by sections of the country as the ultimate economic proof that the power to picket, power to strike, does not inhibit the nonunion competition, which is perfectly legitimate and fair.

You should have competition. We recognize that in the law.

But I think it is also very important economic evidence that you do not have paralyzing power in the building trades.

So, could you get us that, Mr. Biemiller?

Mr. BIEMILLER. We would be very happy to have that prepared for you.

Senator JAVITS. Last, as I see it, the decision in the *Connell* case just made by the Supreme Court, which is very little referred to, because it is obviously not a very clear-cut decision, is extremely important on this question because it contradicts the arguments of those employers who claim to the same argument in everything we have ever undertaken, going back to the Ives-Quinn law in New York, to deal with discrimination in employment on the grounds of race and color in 1945.

Always fears are voiced that the whole industry is going to be dismantled. In that case, tens of thousands of vexacious suits, always the same thing, practically it will not work.

Well, practically it has worked.

What the *Connell* case shows is that if we pass the situs picketing law, we are not going to dismantle all the law, not antitrust laws, not secondary boycott laws. There is still plenty of lethal power with respect to the abuse of power by unions.

The *Connell* case shows that.

Therefore, I think it was very interesting and a very useful piece of evidence in respect to this particular situation.

Mr. Chairman, I ask unanimous consent that the opinion in the *Connell Construction Co.* case may be made part of my remarks.

[The information referred to may be found in Appendix C.]

Senator JAVITS. Would you not agree, Mr. Biemiller, as a labor strategist and statesman of long standing, that though a case—you may not like the case, you may not like the result, it is a perfectly legitimate argument where it serves to show that the protections which people are contending will be lost through passage of a situs picketing law will not be changed or prejudiced or aborted by that law, but persists under other law?

Mr. BIEMILLER. I defer to my counsel, Mr. Gold, on that matter.

Mr. GOLD. We certainly believe that the common situs law will have a clearly defined specific effect on the law, which is to overrule the erroneous principle of *Denver Building* and to correct inaccurate perceptions as to what a secondary boycott is. And, I think that the Senator is quite correct in pointing out that this is not going to change the total corpus of labor law, but will deal simply with this definitional problem concerning the secondary boycott provisions and most specifically whether numerous employers all engaged in a joint venture on single construction site are to be treated as secondary employers, one to the other, or are to be treated as a single entity for the purposes of the secondary boycott law.

I think you are quite correct.

Senator JAVITS. I think that is very well stated.

Are we right to take it on the part of the AFL–CIO that while it reserves the right, of course, to oppose any legal concept which the courts adopt, *Connell* or any other, they are not going to use the situs picketing breakthrough, if you want to call it that, as a lever for displacing the whole body of law on secondary boycotts, et cetera?

Mr. GOLD. We view the effect of this bill, and its House companion, as clarifying the concept of the secondary boycott, and the definition of who is a neutral. The law will be affected by that congressional clarification. And we would hope that, in this instance, the courts would take heed of what Congress has said, and follow the line that Congress has laid down. Obviously, this clarification will not change the entire law of secondary boycotts.

Senator JAVITS. Would you not say, too, Mr. Biemiller, and I would like very much to have your authoritative view on this, and if necessary I hope you would have the AFL–CIO pass on it officially, that if you did get situs picketing straightened out, that there would be a basis for the building trades using the pattern, the organizational and institutional pattern of the Construction Industry Stabilization Committee, to endeavor to come to mature understanding with the building construction industry, which would try, as has been done in steel, for example, to give stability to the industry?

In other words, now that you have the power, and in a sense on parity with the employer, an effort would be made to introduce a note of stability in the industry which would quiet down industrial strikes in that industry rather than increase the likelihood of them?

Mr. BIEMILLER. We concur completely with the statement you just made. That, in our opinion, would be one of the ultimate results of the passage of this legislation establishing parity of strength.

Senator JAVITS. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Schweiker?

Senator SCHWEIKER. I do not have any questions right now.

The CHAIRMAN. Senator Taft?

Senator TAFT. Thank you, Mr. Chairman.

Mr. Biemiller, I have listened with interest to your statement. It was a very good one. It analyzes the law, I think, very well.

With regard to a few points, however, your statement about the amount of construction work done by nonunion firms having doubled in the last 15 years, do you think that might not, in part, be due to the fact that perhaps in some areas that the building trades have priced themselves out of the market?

Mr. BIEMILLER. I do not believe that that has been the basis for the growth of the nonunion contractor. However, this is a situation that has occurred in certain localities, as you are suggesting, and in which the international unions have interested themselves. But, by and large, I do not think there has been any great pricing out of the market.

Senator TAFT. Now, in your statement, on page 8, and your entire analysis really seems to lead us to the conclusion that you feel that the construction trades ought to be covered by exactly the same legal provisions as all other industry generally under the National Labor Relations Act.

Mr. BIEMILLER. As far as the definition of secondary boycotts is concerned.

Senator TAFT. Do you think as to other aspects of labor-management relations that there are certain features of the construction industry that would make it appropriate to have different kinds of provisions of law applicable to that industry?

Mr. GOLD. Yes.

Senator TAFT. Fine. Thank you very much.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. I just want to compliment the witnesses on a very comprehensive and meaningful presentation. You have spelled out, I think, the key issues involved.

Senator Javits, I think, has adequately asked the legal questions I would have.

So I have nothing further to say.

The CHAIRMAN. Thank you very much, Mr. Biemiller and Mr. Gold.

We will recess now and make an effort to be back at 11 o'clock. Right now we are in debate on the Floor and committee meetings must, at this hour, cease until the subject matter is—not disposed of, but concluded for today.

We will try to reconvene at 11 o'clock and finish our morning witnesses between 11 and 11:30 a.m.

[Whereupon, at 10 a.m., the subcommittee recessed, to reconvene the same day.]

AFTERNOON SESSION

The CHAIRMAN. We appreciate your patience and cooperation with the schedule that has to be altered from time to time. We welcome you and your statement.

STATEMENT OF HARRY P. TAYLOR, PRESIDENT, COUNCIL OF CONSTRUCTION EMPLOYERS, INC.

Mr. TAYLOR. If I may, my statement is brief and I would like to read it and conserve time.

The CHAIRMAN. Fine.

Mr. TAYLOR. My name is Harry P. Taylor and I am president of the Council of Construction Employers, Inc. The council is a nonprofit organization, having as its members 12 national employer associations in the construction industry.

Council member associations have a combined membership of 77,000 contractor employers in the construction industry, employing approximately 3,500,000 construction workers. The majority of our member associations is opposed to S. 1479.

All of our member associations have contractor members who employ members of organized labor in the construction industry and therefore are mutually concerned with any legislation having an impact on collective bargaining and related matters. We are probably the most directly concerned management group to appear before this committee. S. 1479, the common situs picketing legislation under consideration here, is an issue with a tremendous potential impact on construction labor-management relations.

While some of our constituent organizations have an interest in aspects of S. 1479 which we will not touch upon, they are covering those aspects in testimony or statements submitted on their own behalf. CCE's analysis is presented from the standpoint of its impact on the entire organized labor-employing sector of the construction industry.

After careful study of the potential impact of S. 1479, the Council of Construction Employers believes that the measure is adverse to the interests of organized labor and contractors that employ that labor.

Construction has been one of the hardest hit industries in our current economic slump. Notwithstanding the horrendous unemployment in the construction industry, there are currently in excess of 100 strikes taking place during efforts to arrive at new collective bargaining agreements.

S. 1479 would provide an added potential threat to jobsite shutdowns by organized labor with possible costly construction delays. Neither contractor nor labor benefits from those situations, yet they are very likely to occur should S. 1479 be enacted.

Contract construction is, by its very nature, a high-risk enterprise. A contractor stakes his business and livelihood on his ability to estimate costs and complete the job in accordance with the specifications at the most economical price. Cash flow is extremely important to the industry. In order for a contractor to continue in business, he must maintain continuous production at the jobsite insofar as possible.

Enactment of S. 1479 would add another significant variable to those many risks already facing the contractor—a tremendous area of risk, and one over which he has no control. When he is a knowledgeable party to labor negotiations, he can assess the factors involved. But the situs picketing bill would put him at the mercy of forces over which he has absolutely no control.

The result of enactment would be to increase risks, costs, delays, and disputes. Urgently needed construction, such as energy-related facilities, could be drastically delayed. The cost in both time and money is borne not only by organized labor and the contractors who utilize the labor, but by the public as well.

I would like to point out a particular inequity that would arise from S. 1479. Prime contractors and subcontractors on a jobsite are all independent businesses. In most areas, each organized trade bargains separately with individual contractors or with the management group employing that trade.

Where a dispute in one trade or an organizational strike shuts down a job, the uninvolved contractors suffer enormous economic penalties. The most inequitable situation arises where a contractor who uses organized labor is shut down even though he is not party to the dispute.

He suffers the economic hardships just as though he were a participant in the dispute, even though he has carefully lived up to the letter of his collective bargaining agreement.

Frequently, there is more than one prime contractor at a jobsite. In such situations, none of the prime contractors has control of the relationships between the owner of the facility and the other prime contractors, nor between the other prime contractors and the unions with which they deal.

Nevertheless, if S. 1479 should pass, all the prime contractors and all the subcontractors at a given site could be shut down as a result of a dispute between one prime contractor or subcontractor and one union.

A construction site might well be considered to be an entire planned community or town, or a highway or pipeline. Any one of those might

The CHAIRMAN. Not one employer. But they are all combined in a common enterprise, possibly.

Mr. TAYLOR. Possibly. But also I think there is going to have to be various interpretations put on some of the language of what is the job site.

It is entirely possible that an Air Force base is picketed because one little landscape contractor was awarded a contract by the government when they have possibly a dozen other prime, general contractors building other facilities which may have more import at that time than that.

Now, is the facility—the entire Air Force base in that kind of case a jobsite? And in States where we have mandatory separate prime contractors for different phases of building work, such as in your own State of New Jersey and Pennsylvania and New York and others, and all subdivisions are required to take the business and award contracts separately for the general construction, a separate one for the electrical, a separate one for mechanical; and those are not subcontractors nor do they have any contractual relationship whatsoever with the other prime contractors but deal directly with the owner.

Now, I hardly see how they can be construed to be in some joint arrangement with each other just because in the finished product they all have direct contract work on the one facility.

The CHAIRMAN. How do you distinguish this from the industrial site?

Mr. TAYLOR. There again, you may have an industrial park, but with several different owners awarding contracts for their own buildings—the same thing can happen on occasion in shopping centers.

The CHAIRMAN. Well, now, I am referring to the area where the situs picketing provisions do not apply, the automobile assembly line. How do you distinguish construction and the enterprise being an industry?

Mr. TAYLOR. Well, I think in general terms, the construction would be the building of something that would become real estate, whereas the automobile plant would be a manufactured product, in this case, automobiles.

Now, I do not know if I am answering your question or understand your question.

The CHAIRMAN. That is quite obvious, but the law is different right now, following the *Denver* case, and the application of free men's right to picket.

Mr. TAYLOR. Well, we may be trying to compare apples with oranges. In the automobile manufacturer's case you have there—you truly have the single employer, whereas in the construction site, that is wholly different. Each employer has no control over the other as to the labor relations policy.

The CHAIRMAN. You can have various contractors working within the industrial site.

Mr. TAYLOR. You certainly can; and if they picket the whole industrial site, they shut down the work of all of the contractors.

The CHAIRMAN. That is right. There is a similarity here if you accept the building of a building as an enterprise just as you accept the assembly of automobiles as an enterprise that is going on within the construction walls.

Mr. TAYLOR. Well, it might be the building of several different buildings and by several different contractors, too, if you want to use that analogy. That is why the provision applying to manufacturing plants does not fit the construction industry; and the plea is that the building trades need equal treatment. Here you do not have an equal situation.

The CHAIRMAN. They are not similar in all degrees, but if you accept the enterprise principle there is a great deal of similarity, it seems to me.

Senator NELSON. You raise the question of industrial parks. You are talking about a park in which there are a dozen—maybe a dozen different industries or commercial businesses or what have you, each individually owned.

Mr. TAYLOR. Yes, sir.

Senator NELSON. Are you suggesting if there was construction, repair, or someth ng going on in one building owned by one employer, that under this bill they could picket the whole industrial park and stop other employers who were doing construction or repair on another bui ding owned by another ndividual who is completely separate and apart from where the dispute is?

Mr. TAYLOR. I think it is quite possible if they are located in the same industrial park type of thing where there were a common entrance off a highway, some such thing——

Senator NELSON. Common tenants?

Mr. TAYLOR. Entrance off, say, a highway or entrance into an industrial park, some such thing, that——

Senator NELSON. But are you saying that it would be your interpretation of S. 1479 that if you have the industrial park, owned by a municipality and——

Mr. TAYLOR. Or a developer of some kind.

Senator NELSON. Or developer, but the buildings that are within that park are owned by individual employers who have no relationship to the other employers except——

Mr. TAYLOR. Location.

Senator NELSON. That they are within the same park. You are saying that a dispute between one of these employers on his building and a labor union could result in picketing of the whole park and stop any kind of construction on other buildings within the park?

Mr. TAYLOR. I think it is quite possible, and I think without a doubt, should legislation such as this pass, it would lead to some interesting court cases which I hope can be avoided.

Senator NELSON. That is all I have.

The CHAIRMAN. Well, this is not the particular place to make a particular record on that situation, I do not believe; but it would seem to me where you have wholly dissimilar enterprises, this provision in the bill, if it were law, would not permit picketing of other enterprises not in any way directly connected with the dispute.

This would be an adaptation, I guess, of the definition of an area that could be picketed.

Mr. TAYLOR. Well, a jobsite or a joint venture—all those things are left to one's imagination.

The CHAIRMAN. I am certain that it would require definition. All situations that cannot be defined in law would have to be—many

law to negotiate with that contractor and seek a condition that will prohibit—prohibit that general contractor from subcontracting to any subcontractor who is nonunion.

The *Dallas Building Trades* case is an excellent example; and as a matter of fact, one of the first cases, Senator Williams, that arose on that issue arose in New Jersey—called the *Essex County Carpenter's* case. Those unions that deal directly with the general contractor have have the right to say to that general contractor, "We do not want you to hire subcontractors or force us, if you will, to work at a job site with any employer that has nonunion men."

The building trades currently have the right to picket for that type of provision; and if they are successful they therefore are able to foreclose the general contractor from in any way subcontracting to a nonunion contractor.

Senator NELSON. Is that a legislated labor dispute?

Mr. APRUZZESE. Yes, sir; absolutely. Absolutely. As a matter of fact, I was interested this morning when Mr. Biemiller was testifying, and I am referring to page 7 of his comments, and he said that there seems to be some concern—and he mentioned the NAM concern—that if a union has a contract with an employer, and there is no strike arbitration procedure, the NAM said that a union is therefore free to strike and with this legislation can strike many more people or withhold labor from many more employers and Mr. Biemiller has said, "What is wrong with that? It's lawful if there is a no-strike provision. If it is not present in the contract, they have a lawful right to strike," and he says, "What is wrong with that? That is the give and take of collective bargaining."

Turn it around the other way.

If a building trades union says to the general contractor in its negotiations "We want a clause from you that you will in no way subcontract to someone that is nonunion or don't ask us to work with nonunion people." If they are not able to get that provision and therefore the product of that collective bargaining does not result in that type of clause, "What is wrong with that?" It is a question of negotiation.

Now, to show how the presence of this type of provision will impact on the totally union job, I would like to give you a few illustrations and, incidentally, Senator Williams, I think we probably have as blatant—as bad a secondary boycott pressures in the State of New Jersey as any place in the Nation. Let me give you a few examples.

We have under construction in our State a very, very sorely needed nuclear plant. We all know about the electric energy shortage and we seem to worry more when we have blackouts and brownouts; but let me illustrate what can happen on this very type of project with all-union labor.

The Operating Engineers are one of the most powerful in the State of New Jersey and for years has never agreed—and as a matter of fact, we are in the throes of a statewide strike at this instant—have never agreed to arbitration or grievance procedures—no-strike clause. They will not agree to give one and the employers have never been able to obtain one.

Now, this is an actual situation where 3,000 men are working on a sorely-needed nuclear plant, with 10 or 12 contractors. Operating

Engineers work for 8 or 10 employers on that project—for the general contractor and some work for the mechanical, some for others.

Now, the Operating Engineers go to the general contractor and they say on that particular type of crane we need 3 men and the employer says that that is outrageous—you do not need 3 men, as your contract does not require it; the contract is a little vague, and there is no no-strike provision or arbitration clause; and they said we need 3 men on that crane and there are 10 cranes on this job. This job will last 7 years or 8 years—a $700 or $800 million project.

They say in addition that you have other items of equipment where men are needed, oilers on that particular item of equipment, and the contractor says, I don't think I need one.

Well, now, they say, if that is your answer currently under existing law they draw their laborers——

The CHAIRMAN. Here the contractor is the general and the Operating Engineers are dealing there and their contract is with the general contractor. This is not complicated with a sub; am I right?

Mr. APRUZZESE. The Engineers do have contracts with the other subcontractors, but in my example——

The CHAIRMAN. Operating Engineers working for the general?

Mr. APRUZZESE. Yes, sir. So they say we want this extra man on the crane and we want this extra man on another piece of equipment. The general says no; it is not necessary; and we do not want to do it. As a matter of fact, throughout the course of the job, if they run along with that demand, it could very easily cost between a quarter of a million dollars or a half million dollars; you know, extra men on all this equipment for the duration of the job.

The employer says no.

Under current law, they could withdraw their men from that particular general contractor. If he had 10 engineers or 20, 20 men stop working for him and him alone.

Now, the economic battle is waged. He either gives in or he does not. It is a lawful strike. There is no way he can enjoin it. It is just a battle of economic power.

Now, we enter the common situs bill, S. 1479, and there are 100 engineers on this job site working for other employers; none of them have a dispute with the engineers and the engineers do not have a dispute with them.

Under this bill, they take all 100 engineers and withdraw them from every contractor on that job and the entire job is down—and, at a cost, I might suggest, and the arithmetic is very simple—of approximately a quarter of a million to $350,000 per day when you stop to consider the loss of capital, loss of interest on the investment, the loss of being able to produce at the end of a job; and they have to buy electric power off of the grid system at three times the cost to produce it. The point is they now engage in what is under current law a secondary boycott and enmesh neutrals in disputes not their own in this current squabble with the general contractor.

There are no nonunion men on this job, no nonunion men——

The CHAIRMAN. Are these other engineers neutralists, you say; are they Operating Engineers, too?

Mr. APRUZZESE. Yes, sir, same union—same union.

housing in some of these areas, and Congress already has the Davis-Bacon rates, which assures that the prevailing rate wage, which is not usually at variance with the union rate, but when those projects are put up, people still cannot afford to get in; so we have rental subsidies; and the whole sequence means more and more and greater and greater cost.

Now, I submit to you that this legislation only has one tendency to raise those costs. It cannot do anything else and the reason is simple. If, as a reasonable businessman—you know that you are engaged in a project and some other employer has a dispute, and that union wants to picket the whole job, it is not enough that your labor relations are settled; it is not enough you have your own contract, and you have settled your deal for a couple of years, some other employers may have a problem or his contract does not have a no-strike clause, when the picket line hits, the whole job is down.

How do you estimate that in your cost? You obviously, to the best of your ability, have to put in some kind of a contingency, some type of number; and it can only have one result—the cost has to be escalated. No other way.

The cost of construction for all of these things, mass transit, which we cannot get in New Jersey—we cannot get a lot of things, roads, anything, because costs are fantastic.

School board referendums are defeated and time after time because the public does not want to pay more. A word should be said about nonunion development in many States. Reference has been made in the course of the hearing to double-breasted operations and we probably have all heard that term. An employer can always operate union—for reasons that he cannot control—he can no longer get that business, and therefore will decide to form another business to operate what we call an open shop, or merit shop, and some people say nonunion! Where did these first arise? They did not arise where the people would like to point to—in the south. The first one was in New York State. Senator Javits' State was the first one. Michigan—the President's backyard; that was the second NLRB case; and why do these happen? It is because union contractors cannot bid on a $2-, or $3-, or $4-million job and get it.

Now, in New York City—in New York City where there is, incidentally, currently a citywide strike, the building trades in New York City with this type of leverage, S. 1479 can bring an entire city down. Take the Teamsters—Teamsters Union in New York City; and we talk about cost—for their pension contribution, receive $1.58 an hour for pension, 73 cents an hour for welfare fund, which is $2.31 per hour. To be actuarially sound under the ERISA standards, and they need at least 27 cents in the pension and 10 cents in the welfare so that in New York, they would receive $2.68 an hour, an amount higher than the minimum wage goes for fringes alone; and if they are unable to get it, they can picket every job throughout the city, irrespective of the employer, and shut the whole thing down; so consequently, from a cost standpoint, again this is legislation that is not needed.

The CHAIRMAN. Could I ask you this, sir?

Mr. APRUZZESE. Yes, sir.

The CHAIRMAN. You have a fully prepared statement that was submitted to our committee for this hearing, and I would like to include that completely in the record, if I would.

Mr. APRUZZESE. Yes, sir. I would certainly appreciate that.

The CHAIRMAN. I appreciate the fact that you are hitting the highlights and amplifying on them. I wonder, because of our time problem, if we could ask Mr. Connerton to come up and I have just been given a notice that I have an additional 15 minutes, at least, to listen to the next point, and we will make that part of the record.

[The prepared statement of Mr. Apruzzese follows:]

For example, the efforts and the products of many independent employers such as steel, tire, plastics, aluminum, glass and electrical suppliers, are necessary for the production of one automobile. Likewise, it is not uncommon for a dozen or more independent employers to contribute to the construction of one office building. As in the case of the automobile, the office building could not be built without the contributions of each independent employer. But, unlike the automobile, most of the parts of an office building must be built at the site where the building will be located. The practical effect of the location of all employers and all employees involved at a given construction project at one place at one time is that secondary pressures can be exerted by a union easily, effectively and inexpensively.

Labor disputes leading to picketing can arise in three areas: an economic dispute, a work preservation disagreement and an organizing campaign. Due to the presence of multiple employers on a construction site, a building project is unusually susceptible to labor disputes of each type. An illustrative example will demonstrate how this might occur. Suppose that on a large construction project, where thousands of workers doing a wide variety of jobs are employed by a galaxy of subcontractors, a group of 50 tile setters get into a dispute with their employer who has contracted for all tile setting work. Under S. 1479 these 50 tile setters would not only be permitted to picket their employer but they would be allowed to picket the entire construction site. A chain reaction of work stoppages by the thousands of other employees on the project would be likely, and, eventually, all work on the project would be brought to a standstill. If the primary

tile setter employer refused to give in to the union's demand, the general contractor would be forced to replace him with a subcontractor having no dispute with the union to get the job moving again. Regardless of the outcome of such a union squeeze play, many innocent persons would be hurt, a great deal of money would be lost by purchasers of construction (including the government) and suppliers, and there would be little possibility of the primary employer obtaining a just resolution of the original controversy under such tremendous pressure. Furthermore, one union successfully using secondary pressure will incite others to follow that approach, adding to instability in the industry. Moreover, local unions can be uncontrollable at times and may seek unreasonable wage increases using the additional power given them by S. 1479.

Secondary Boycotts Detract From National Labor Policy

S. 1479 is drastic legislation--drastic not only because it would extend unjust, final and unnecessary power to the building trades unions but because it represents a radical departure from the philosophy of our long established national labor policy.

One of the express purposes of the National Labor Relations Act is to promote industrial stability by eliminating or minimizing the causes of industrial strife. By their very nature, however, secondary boycotts detract from this purpose. As they reach out to ensnarl neutral employers and employees, they cast into jeopardy that many more businesses and jobs. An alien force, they undermine existing employment relationships and are clearly designed to jeopardize, if not eliminate, the free choice of employees in representation matters and any possibility of equitable resolution of labor disputes.

This argument is legally and realistically unsound. The Supreme Court itself rejected it in the Denver Building Trades case, pointing out that the fact that a contractor and subcontractor were engaged in work on the same construction project "did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other." 341 U.S. at 689, 690. Moreover, as anyone even remotely familiar with the realities of construction project work knows, the general contractor and each subcontractor at a construction project are in every sense of the word separate entities. They deal with each other at arm's length and on a practical, business-like basis. Subcontractors may be small businesses, but they can also be large specialized companies that invest considerable money, equipment and personnel in a job, and operate with little day to day contact with the general or prime contractor. Subcontractors often compete with each other in the same field, and they each independently negotiate the wages and working conditions of their own employees. The individual problems of each subcontractor control his ability to determine wages and working conditions of his own employees. Each subcontractor is independently responsible for its own profits and losses and the completion of that part of the project for which it is responsible. And frequently there will be numerous contractors on a job who deal directly with the owner of the building rather than with one another or with the general contractor. Moreover, with many contractors on a job, many labor contracts will be expiring at different times possibly ensuring a succession of disputes which S. 1479 would magnify.

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

The folly of lumping all contractors and subcontractors on a construction site into one labor relations category becomes clear when the common objective--and the all too frequent result--of common situs picketing is examined. That goal, of course, is the removal from the construction site of any employer offensive to the union. That objective has been demonstrated frequently where an open or merit shop (non-union) contractor performs work on a construction site where the other employers are parties to local union agreements. Time after time, the unions have picketed the open shop employer to "advise the public that this employer does not comply with area standards" without ever attempting to organize the employees of that subcontractor. The obvious objective is to have that employer removed from the job site and replaced with an employer who is a party to the local union agreement and who employs persons who are already members of the union. This common event completely contradicts the fiction urged in support of S. 1479 that all employers on the common situs are "joint venturers."

before the Special Subcommittee on Labor, House Committee on Education and Labor, 90th Cong., 1st Sess. 1967, p.86).

Trades Unions' Wage Gains are Proof of Power

The success of the building trades unions in securing wage increases should be sufficient proof that the existing laws in no way place them at a disadvantage.

In this year of noticeably small wage increases the electricians in Chicago negotiated a 15.6% increase which will raise their wage rates to $12.98 per hour by July 1, 1975. In Columbus, Ohio the asbestos workers negotiated a 10.6% increase which will raise their basic wage rate to $12.47 per hour on July 1, 1975. Such wage settlements have occurred across the nation. In Shreveport, Louisiana the electricians negotiated a 14.3% increase which will raise their wage rate to $9.69 per hour by the end of 1975 and in Seattle, Washington the plumbers negotiated a 38.2% increase which will raise their rate to $14.54 per hour on January 1, 1976. The Secretary of Labor himself has expressed concern about a $2.30 per hour increase for union plumbers in Portland, Oregon. The same union recently bargained for a $1.60 per hour increase on an approximately $15.00 base for its San Francisco members!

These are revealing examples but they cannot be classified as exceptions to the general rule. The national average union wage increase for large cities in construction between April 1974 and April 1975 was 9.6% to an average $10.00 per hour wage including fringe benefits. The Department of Labor reports (for the most recent period recorded) that the average weekly wage in contract construction in September 1974 was

$266.82 for a 36.7 hour average work week. This contrasts with an average of $181.75 weekly in manufacturing for a 40.1 hour work week. The average hourly wage in contract construction had risen to $7.04 per hour in 1974, compared to $4.52 per hour in 1968. This increase compares with a rise in the average hourly wage in manufacturing from $3.12 per hour in 1968 to $4.51 in 1974. (Source: BLS "Employment and Earnings" Vol. 21, No. 40, Oct. 74.)

As these figures illustrate, the building trades unions have been successful in obtaining the highest overall hourly rates in American industry and it seems reasonable to expect that this construction wage pattern will continue in the future. As the comparison of the wage rates for 1968 and 1974 demonstrates, construction workers have not only historically been paid more than manufacturing workers but the gap has been widening for many years. This gap has been brought about in large part because of the powers of the building trades unions --powers that triggered the wage spiral that resulted in the formation of a Construction Industry Stabilization Committee and ultimately in the 1971 wage-price freeze. Vesting even more power in the building trades creates a very real danger of starting a new inflationary spiral of wages and prices. Aside from other considerations, this alone is ample reason for the bill's rejection.

Seasonality of Construction Doesn't Explain High Wage Rates

The building trades unions, of course, attempt to defend such large wage settlements on the grounds of the seasonality of construction work. However, it must be noted that the unions which have won some

dismissed by the National Labor Relations Board. Its decision was later upheld by the Supreme Court.

But as detrimental to efficiency, cost considerations and the employees of fabricators as this "product boycott" loophole is, it is at least presently limited to primary activity. Because S. 1479 would permit secondary activity, however, this loophole would be expanded to put into the hands of the trades unions the power to decide the technological future of industry. What contractor could take the risk of testing a product boycott where the immediate result would be a shutdown of the whole project? That he might eventually prevail after years in court would certainly have to be considered a Pyrrhic victory, in view of the losses inflicted upon both himself and other subcontractors by the closing of the project. Since few contractors could risk that, it is clear that they would have no choice but to refrain from adopting any innovative products or procedures -- unless the union gave them the green light. The building trades unions would then literally control the technological future of the construction industry!

S. 1479 Not the Answer to Construction Industry Problems

Beset by high costs and declining demand, construction has been truly one of the industries most negatively affected by the recession. It does not need to face the possibility of expanded work stoppages and increased construction costs that S. 1479 offers. S. 1479 creates no new jobs and, in fact, may eliminate some existing ones as small disputes escalate to envelope entire projects. In fact, it would seem that a union

picketing under S. 1479 could carry the dispute to every construction site where their subcontractor employer has operations, no matter where such jobs are located. Moreover, due to total picketing of a job site, markets for construction materials will evaporate displacing employees of suppliers as a result of production cutbacks.

Construction industry efficiency is increasing, and the competition offered union contractors by merit shop contractors has been one factor in encouraging unions to reassess and occasionally revise the operation of restrictive union work rules.*/ S. 1479 will snuff out that competition because by its nature it is designed to separate union and non-union contractors and subcontractors. Like any other type of irrational discrimination, that encouraged by S. 1479 is unfair and is contrary to the American free market system which entitles each business to be judged on the merits of its goods or service. In areas of the country where union and non-union craftsmen work side by side, general contractors and construction purchasers will use either all union or all non-union subcontractors, and deny employment to the "wrong" kinds of contractors. In parts of the country, or on jobs, where union workers are in the minority, union workers may be kept off the job completely.

S. 1479 prohibits common situs picketing in support of "race, creed, color or religious" discrimination but because "sex" is not an included category, the bill allows picketing to get (or keep) women off the job. Furthermore, since minority subcontractors are likely to be small businesses, and small businesses are likely to be non-union, the bill would allow building trades unionists to picket a site at which a non-union minority subcontractor was operating. The picketing would be

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*/Examples of restrictive work practices are attached as Exhibit A.

aimed at the non-union aspect of the subcontractor, but the effect would be anti-minority. For example, last August the Washington Building and Construction Trades Council AFL-CIO strenuously objected to the use of minority non-union contractors on the Metro subway system. [/"Union Fight Metro Rule on Contracts for Blacks," Washington Post, p. A-34, (22 August 1974); also see Washington Post, p. A-1, A-7, (29 August 1974)]. If common situs picketing had been legal at that time, any minority non-union subcontractors on the job would have been prime union targets. Thus, due to its potential impact on female and minority workers and subcontractors, S. 1479 is contrary to national policies of non-discrimination and should not be enacted.

Conclusion

The construction industry is the largest single industry in the United States today and is responsible for approximately 11% of the Gross National Product. If the United States is to meet the increasing need for construction of facilities efficiently and at reasonable cost, the construction industry must not be upset by the likes of S. 1479.

As the amount of construction needed continues to increase, the cost to the public of unnecessary work stoppages at construction sites increases dramatically. A substantial portion of this high cost has been caused by unnecessary and frequently illegal work stoppages on construction sites due to the power already in the hands of the building trades unions. This trend would continue under S. 1479 and would encourage the extension of labor disputes to innocent contractors and their employees and would also affect building materials suppliers'

access to their markets. Make no mistake: this bill would dramatically increase the already high cost of construction.

What good purpose would be served by S. 1479? According to the building trades unions, it would serve the purpose of balancing their picketing rights with those of industrial unions. We have seen that the imbalance to which they refer is wholly imaginary and the result of a misconception of the employment situations in manufacturing and construction.

Thus, there is no "good" purpose behind S. 1479. In fact, it is hard to conceive of a purpose so worthwhile as to offset the host of evil consequences of this legislation -- consequences such as

-- the closing of mammoth construction projects over a trivial dispute with one small subcontractor; a result that would be detrimental not only to all of the parties working on the project, but also the public interest -- as in the case of low income housing, for example -- or even our national security -- as in the case of a missle site project;

-- the extension of labor disputes to innocent parties -- a result that would clearly jeopardize the stability of existing employment relationships;

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

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

-- the expansion of union power to permit trades unions to control work assignment in jurisdictional disputes; and

-- the certain upward pressure in costs resulting from vesting even more power in the building trades unions at a time when their wage settlements and restrictive work rules are already restraining industry productivity.

The immeasurable harm that would result from the secondary boycott exemption proposed by S. 1479 clearly demonstrates that it is even more important today than it was when the Taft-Hartley law was enacted in 1945 for us to realize that there is only one kind of secondary boycott -- a bad one. To unleash this evil for the singular benefit of the building trades unions is unconscionable. For these reasons, the National Chamber is firmly opposed to S. 1479.

Exhibit A

Examples of Restrictive Work Practices in Building and Construction Trades Unions

Heat & Frost Insulators & Asbestos Workers, Local No. 55
1 August 1973 - 31 July 1975*

"Brushes used on all jobs not to exceed 4" in width..."

"No buckets larger than 12 quarts capacity to be used on any job for handling materials."

Plasterers & Cement Masons of the U.S. & Canada, Local No. 293
1 July 1972 - 30 June 1974*

"When trowelling machine is used in finishing concrete slabs, all slabs must be hand trowelled before and after each operation of the trowelling machine."

Electrical Workers, Local 505
1 September 1973 - 31 August 1974*

"In all shops employing 4 or more Journeymen, if available, every 4th one shall be 50 years or older."

"All conduit shall be cut and threaded on the job or in shop by Journeymen working under terms of this agreement."

Operating Engineers, Local 653
1 July 1972 - 30 June 1974*

"There must be firemen or oilers on the following machines: cranes, shovels, draylines, crawler type backhoes, gradalls, pile drivers, concrete paving machines, ladder type trenching machines, caisson and all drilling machines, ... all boilers require a fireman ...."

"If an outside mechanic is required on the job site, the Journeyman Engineer and/or oiler shall assist in all repairs."

"A Journeyman Engineer shall be permitted to operate two air compressors for one contractor. Any additional machines will require another Journeyman Engineer. No other contractor or sub-contractor will use air off this compressor to defeat the purpose of this section. All types of air compressors regardless of power (gas, diesel or electric) will be covered by a Journeyman Engineer, unless otherwise approved by the /union/ Business Representative."

Plumbing and Pipefitting Industry of the U.S. and Canada (United Association)
15 July 1972 - 14 July 1974*

"All fabrication of process pipe two inches or under will be fabricated on job site. All other fabricated pipe will have the U.A. label to be installed by members of the U.A."

"Two U.A. members will work together on fabricating, welding, fitting and erecting of all welded pipe."

* Date of Collective Bargaining Agreement Analyzed

The CHAIRMAN. Could you stay with us?

Mr. APRUZZESE. I would be delighted, if I can return.

Is that what you are suggesting, Senator?

The CHAIRMAN. Well, just stay right here.

Now, Mr. Connerton, I have already introduced the fact that you will be the next witness.

Mr. Connerton.

STATEMENT OF ROBERT J. CONNERTON, GENERAL COUNSEL, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO; ACCOMPANIED BY JACK CURRAN, LEGISLATIVE DIRECTOR, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL–CIO

Mr. CONNERTON. Thank you very much, Senator.

Mr. Chairman, I am general counsel of the Laborers' International Union. I would like to ask at the outset if I could answer some of the questions that were raised——

The CHAIRMAN. Could I do the same and make the same arrangement with you, that your full statement which, unfortunately, I have not had an opportunity to read in advance, be included as part of our record?

Mr. CONNERTON. I would be deeply appreciative, Mr. Chairman.

The CHAIRMAN. Fine, it will be included at the conclusion of your testimony.

Mr. CONNERTON. With respect to some of the questions raised by Mr. Taylor, the House report makes it very clear that where there is a separate bidding statute in existence—and it is my understanding that such statutes are operative in approximately 10 States at this time—where there is a separate bidding statute in existence, then the provisions of this bill would not apply.

Second, Mr. Taylor raised a question with respect to an airbase. I think it is eminently clear from the bill itself that it talks about a construction project and not an airbase; and simply because it is a construction project that has been established on an airbase does not mean, under this bill, the union would be free to picket the airbase. This also holds true of industrial parks.

What we are talking about is a site of construction on which a general contractor and subcontractors are employed.

If I might turn quickly to one or two of the points that Mr. Apruzzese made.

I am well aware that he has a long history of representing employers in the State of New Jersey, and that there has been some longstanding bargaining disputes with some of the unions—whose fault it is, we will leave that to the Senate to decide.

But turning to the specifics here, with respect to the nuclear plants—all the nuclear plants are covered by international agreements, which in turn contain no-strike provisions.

With respect to the strike that he is describing as going on at the present time up in New Jersey, my understanding is that the strike is an economic strike after the expiration of a collective bargaining agreement by the operating engineers. It is very clear that under those circumstances, all the work is brought to a halt, whether it happens the first day, the second day, or the third day.

I am also aware that there has been an economic strike in New Jersey involving the carpenters statewide, and this strike arose as a result of fragmentation inside the employers' organization where a number of contractors left Mr. Apruzzese's contractors group and set up a separate contractors group and then proceeded to give away the kitchen sink in order to get part of the industry promotion plan. There were such involvements as the representation on the board of trustees of the pension and welfare funds, and who would be the attorneys representing the various funds and various contractor associations. I know this because my international union was involved in the negotiations in the State of New Jersey; and we entered into an agreement for 25 cents an hour each year for 2 years, subject to other trades reaching generally the same kind of a conclusion, and we were forced to accept 50 or 60 cents more than we wanted to accept because of the—it is true. We actually entered into an agreement with one of the contractors associations, and we were forced to go back and revise the agreement because the association had negotiated for a much higher increase with another union; and that is where the the negotiations got involved over the distribution of industry promotion funds and representation on the board of trustees, attorneys, and so forth.

Now, what I would like to do very briefly is to try to reply to some of the points disputed on the record here and answer some of the misconceptions and untruths, as you described, Senator.

With respect to Mr. Taylor's point regarding the energy-related facilities—in fact, they could be delayed. You will note that the bill does provide a 10-day strike notice covering not only national defense projects but all projects, and requires approval on the part of the national unions.

In addition thereto, Mr. Taylor should be aware that the President's Labor-Management Committee has unanimously passed a specific list of recommendations to aid the electric utility industry, including provisions setting up machinery to see to it that work stoppages do not occur on utility construction.

Senator NELSON. Let me ask you this: You say there is an international agreement for no-strike on nuclear plant construction?

Mr. CONNERTON. Yes, Senator.

What happened was the President's Labor-Management Committee unanimously passed resolutions for the purpose of meeting problems of utilities, which included specific proposals for legislation. As part of those resolutions, the union and management representatives agreed to a commitment to set up a separate body on utility construction to see to it that disputes do not result in strikes, and the building trade department and its international unions have pledged their willingness to sign a no-strike agreement covering all of the utilities in this country.

Senator NELSON. That agreement was reached when?

Mr. CONNERTON. The agreement of the President's Labor-Management Committee was reached approximately 3 weeks ago, Senator, and it embraces the legislative proposals to aid utilities in raising the external capital of $300 billion that will be required for needed utility expansion over the next 10 years.

Senator NELSON. I thought you meant that was an agreement long established.

As I looked at the Federal Energy Agency Report on Nuclear Powerplant Construction the other day in which, of the 20 plants under construction last year, there were 18 months of delay on account of strikes; so this was not applicable at that time; is that correct?

Mr. CONNERTON. That is correct, Senator.

Now, a number of questions were raised in the NAM statement.

For example, mention is made that this legislation could overrule section 8(b)(7)(A) of the Taft-Hartley Act. There is a specific provision in the bill itself which would not make lawful action which is presently unlawful under the statute.

Now, another point I think we need to make clear is that under the bill as proposed, the building trades unions would not be able to shut down industrial sites so that if, for example, a construction contractor was working at the industrial site, under the bill we advance, the building trades unions would be limited strictly to picketing the affected contractor at that site, and would not be permitted to expand his picketing at that site, and would not be permitted to expand his picketing to embrace the employees of the industrial employer.

Some question was raised as to the circumstances under which unions can picket, at the present time, and as we understand the law, unions cannot picket where either a no-strike clause is contained in their contract or alternatively where a grievance procedure is established in the contract even in the absence of a no-strike clause in the contract.

That is basically the *Boys Market* line of decisions.

A number of the contractors associations, including Mr. Taylor, advance the position that there is no work relationship between the general contractor and subcontractor on a construction site, and I would merely direct your attention to page 9 of NAM's statement where they lay to rest that bogey man once and for all. They indicate very clearly that there is an inherent relationship of construction tasks, and that all the contractors on a construction project are related.

Now, it has been indicated that we are here seeking this legislation to increase the present power of unions in the construction industry. We wish to make it clear that what we are trying to do is to restore balance—preserve the status quo and not to increase the power of unions.

Now, in my prepared statement I indicate that the contractors over on the House side testified that the nonunion construction in this country has increased during the past 10 years from 20 percent to 40 or 50 percent of construction. I think the record before this committee makes it eminently clear that it is not because of the unfair application of the secondary boycott provisions to the building trades industry picketing beginning with the *Denver Building Trades* case; the *GE* separate gate case; *Moore Dry Dock* standards being interpreted restrictively. The true objective test having been added with the net effect that the building trades people, outside of the time the collectively bargaining agreement expires, and the agreement is open for economic raises, when they can shut down the whole area at one time. Their rights to picket have been restricted, that they might just as well, from a legal standpoint, be picketing in a park.

The CHAIRMAN. We are called to the floor to vote.

[Short recess.]

The CHAIRMAN. We are running into all kinds of time complications now. I wonder if you would supplement the statement you have submitted? They have been very, very helpful and constructive in your colloquy and dialog here—if you gentlemen would care to make a supplementary, final statement for our record of the key points of understanding and misunderstanding and I think—which have been raised here within the last half hour, it would be helpful for our record if both of you could submit a summary of what you would say if you were going to continue to talk here now.

Would that be agreeable?

Mr. CONNERTON. Perfectly agreeable.

The CHAIRMAN. My constituent, Mr. Apruzzese?

Mr. APRUZZESE. Yes.

The CHAIRMAN. Could you do that?

Mr. APRUZZESE. Yes.

The CHAIRMAN. I regret to have to do this, but the time complexity and the demands here are just pushing us into straitjackets.

Mr. APRUZZESE. How much time would you allow us for that, sir?

The CHAIRMAN. The way I think, you can probably have that tomorrow or the next day. You are very impressive and I am sure you can do this within 24 hours and get it to us. Am I right?

Mr. APRUZZESE. I have a few strikes back home to try to settle.

The CHAIRMAN. Take the Metro and you can do it all the way home on the train.

Senator NELSON. I wonder; Mr. Apruzzese raised some very specific examples of the problems that he thought would be created with the adoption of this legislation. I would want to be sure that the proponents of the legislation specifically address themselves in response to the issues raised so at least we will have both the viewpoints.

Mr. APRUZZESE. I have a few others that I was going to raise, and I hate to always—hate the need to reduce it to writing because somehow you get across a lot better when you are talking eyeball to eyeball. I for one would like to return if that is possible, with what I have to say, which will only take about 5 minutes.

The CHAIRMAN. All right.

Senator Nelson will come back and——

Senator NELSON. I will come back in about 15 minutes.

[Short recess.]

Senator NELSON. Would you continue? Go ahead, Mr. Connerton.

Mr. CONNERTON. Thank you very much, Senator.

Some reference was made in the prepared statement from the Chamber of Commerce that this bill would destroy independent unions. There has been a specific provision added to this bill in the House that would not permit unions to engage in picketing for the purpose of eliminating independent unions from a construction site. So the statement is untrue.

Senator NELSON. Well, wait one moment. I have not had a chance to look at that provision. You are saying an independent union—nonunion——

Mr. CONNERTON. Independent union.

Senator NELSON. This does not apply to nonunion?

Mr. CONNERTON. No; it does not.

Senator NELSON. That if there were an independent union in the construction field——

Mr. CONNERTON. Yes.

Senator NELSON. That the bill would specifically prohibit picketing by that nonunion—independent union on the job?

Mr. CONNERTON. That is correct.

Senator NELSON. Are there any independent building unions in the building construction industry?

Mr. CONNERTON. Very few. Probably a few thousand. But the statement——

Senator NELSON. A few thousand employees?

Mr. CONNERTON. But the statement keeps cropping up, and there is a statement made, Senator, on page 14 of the statement submitted by the Chamber of Commerce which indicates that the union can carry a dispute at a particular job to every job site of an employer; and we suggest that statement is incorrect; that the picketing will be limited to the site where the dispute has occurred.

Now, in the testimony on the House side—and again over here on the Senate side, on the part of the Associated General Contractors, they make reference to shutting down the Alaskan pipeline, and they keep repeating that every so often, that one kind of feels that they hope somehow or other that they can induce somebody to shut the Alaskan pipeline down. But we make it clear that all of the unions engaged in the Alsakan pipeline are covered by a collective bargaining agreement containing very strict no-strike clauses, and that whether the employees involved are covered by the agreement or whether they come in as they indicated by boat, from Canada or shipped by truck from Canada, that it would be a clear violation of the collective bargaining agreement; for any union to engage in any strike on the Alaskan pipeline.

Senator NELSON. Let me ask a question on that point that covers a specific situation where there is an agreement. Supposing there were no agreement on the no-strike on the Alaskan pipeline, and you had a strike by one of the trades, mechanical trades, would that involve the whole pipeline?

Mr. CONNERTON. No, Senator. You could only picket at the site of the dispute. You could not close down the whole pipeline.

Senator NELSON. What does that mean? Does that mean the whole pipeline from Prudhoe to Valdez?

Mr. CONNERTON. The strike would be where the work had been let out under a general contract and you probably have on the Alaskan pipeline 200 or 300 different sites.

Senator NELSON. Where the contract is let to a general?

Mr. CONNERTON. Any number of general contractors are operating under the Alaskan pipeline agreement, on pumping stations and so forth.

Mr. CONNERTON. I was not speaking of the strike. I was speaking of——

Senator NELSON. The picketing?

Mr. CONNERTON [continuing]. The site, the territorial limit to which the union could picket. And I was saying the union could not picket beyond the site of the particular general contractor who was involved in the area of dispute.

So that, for example, on the Alaska pipeline, you would have 40 or 50 or 100 general contractors. Simply because you would have a dispute with one general contractor would not mean you could then go out and picket all the other general contractors on the pipeline,

Senator NELSON. Well, if you had one contractor who had, say, the laborers for all pipelines, just labor contract, then you could strike the whole pipeline, could you not?

Mr. CONNERTON. If that were the case. In other words, if the work had all been let out on one general contract——

Senator NELSON. No, there would be lots of general contractors, but one of them was a contractor who had just the laborer union working for him.

Mr. CONNERTON. I doubt from a practical standpoint, Senator, that would occur, because laborers would be working for all the contractors. They work for general contractors and subcontractors, and building contractors and heavy contractors.

Senator NELSON. Supposing it was one of the trades that was necessary the whole length of the pipeline.

Mr. CONNERTON. I could not contemplate that.

Senator NELSON. I could. [Laughter.]

I do not know how many trades you have got involved in the pipeline you are building under-ground and above ground. You have got all kinds of mechanical trades involved. And one of them might have the contract for the specific function respecting the laying of that pipeline.

Mr. CONNERTON. Yes.

Senator NELSON. Welding of the pipe and what have you that covered the whole line.

Mr. CONNERTON. Right.

Senator NELSON. If that was the case, then they could strike the whole line, could they not? Or picket the whole line?

Mr. CONNERTON. The answer is that under that assumed set of circumstances, they could.

In the absence of a no-strike clause in a collective bargaining agreement, or in the absence of a grievance procedure, they could.

But what I am saying is that in most of these situations, in the pipeline industry, the work is let out in sections; and to different contractors. And insofar as the unions are concerned, we feel under those circumstances, the site of the construction would be the work being performed by a particular contractor. And not the entire Alaska pipeline.

Continuing, Senator, a statement made by the ABC with regard to mass picketing. Mass picketing is not permitted by this bill—not permitted. Mass picketing is unlawful under the statute and would not be permitted by this bill.

With regard to the broad-scale conspiracy charge the ABC filed against the various unions, they neglected to tell you that conspiracy charge was summarily dismissed.

The ABC makes all kinds of gratuitous conclusions dealing with their great productivity and their efficiency. I would suggest that there is absolutely no evidence whatsoever to support this unfounded conclusion. In fact, the plain truth of the matter is that the only way in which they can compete with the union contractors is by paying cheaper wages and that is the long and the short of it.

Again, some reference is made to wildcat strikes being permitted by this bill. They are not.

In terms of jurisdictional strikes, jurisdictional strikes are already outlawed; they are not permitted by the bill.

Reference is made to picketing for the purpose of getting a union label. That is not permitted by the bill. They say that under this bill you could picket an entire jobsite if a steward was fired; that simply is not so.

It is alleged that a union could picket the job for the purpose of enforcing a union shop agreement and that clearly is not so.

Some other horrors have been claimed with regard to preventing a supervisor from ingress or egress onto a job. This in my judgment is clearly prohibited by the statute at the present time and the law on that issue would not be changed in any way by this particular legislation.

They make reference to picketing all entrance gates at the installation of a defense plant. Once again we say that is clearly not true. We are talking about simply where a contractor is being employed on the site of construction.

They contend this bill will result in more strikes.

Senator, I think you will recall in 1959 the Congress granted to the garment unions, to the needle trades, the same provision that we are seeking here.

Now, in that situation the granting of permission to strike different contractors on the site did not result in additional labor disputes. In fact, the number of labor disputes was diminished.

What it did do was it stabilized and preserved the existing situation and it prevented the garment industry from going nonunion, the way the construction industry is going nonunion.

Now, reference is made to 1,500 of the 3,000 secondary boycott charges being filed annually with the National Labor Relations Board. This is true and that is because of the turbulent conditions existing in the construction industry at this time. And it also indicates the distortion of the secondary boycott concept. What we suggest to the Senate is that if you will pass this bill, rather than increasing the number of strikes, it will diminish the number of strikes substantially. And we will have more labor peace in the construction industry rather than less labor peace.

As Dr. Dunlop indicated in his testimony in the House, all this bill would do would be to establish a uniform labor policy on a construction site. And he indicated that in his 30 years as an impartial expert in the construction industry, labor and management had agreed that a common labor policy on a construction site would reduce the number of work stoppages and lead to labor stability rather than increase the number of work stoppages.

Let me make just one final point, Senator, because much has been said about wages in the construction industry.

Dr. Dunlop testified over in the House that this bill would have no relation one way or another upon the issue of wages in the construction industry. But let me say that insofar as the wage condition is concerned in the construction industry at the present time, I think it can be clearly laid at the door of the contractors. Prior to 1947, all agreements were required to be approved by the international unions.

Then, with the passage of Taft-Hartley, in order to relieve the international unions of liability, most international unions changed their constitutions.

Senator NELSON. When you say all contracts, you mean all local contracts?

Mr. CONNERTON. That is correct, Senator. That was the stage of the practice in the construction industry, that is, with most unions, prior to the passage of the Taft-Hartley Act of 1947.

Now, in 1959 Congress was considering the Landrum-Griffin Act, and you will recall, at that particular time, that the building trade national unions were accused of entering into sweetheart contracts with employers. And there was testimony with respect to certain towns, including Mr. Taylor's hometown of Philadelphia.

The long and short of it was that we, at that particular time, tried to persuade the Associated General Contractors not to support those particular provisions, because we felt that the absence of an international union's presence in collective bargaining would lead to increased strife at a local level.

But, nevertheless, they were once again caught up in their own philosophy, and, as a result, they supported provisions that had the effect of relieving international unions of authority they had exerted over local unions in the past.

You can go back to that particular period, you can trace the subsequent fragmentation of the construction industry, the whole whipsong and so forth, to what happened at that particular time.

Senator NELSON. The international unions, you say, prior to 1947 approved all local contracts. Was that simply international union practice or was there anything statutory involved?

Mr. CONNERTON. No, it was just international practice, resting upon provisions of international unions' constitutions. So when Congress passed the Taft-Hartley Act of 1947, in order to relieve themselves from liability in the event the local engaged in this illegal conduct in the case of bargaining, the international unions, in most cases, removed the approval provisions from their constitutions. But, nevertheless, they continued to play an active position in bargaining at local levels.

In 1959 with the passage of the bill of rights provisions, the trustee provisions, the Title V and other provisions of Landrum-Griffin, the international unions ceased exercising any active role in bargaining at a local level.

What I am saying is historically you can trace the whole fragmentation of bargaining in the construction industry from that period on.

Senator NELSON. You recommend something statutory?

Mr. CONNERTON. Yes, we do, Senator. And we are supporting provisions which have been added to the House bill at the suggestion of Dr. Dunlop and the administration that would, first, require 10 days' notice prior to striking and, second, require approval on the part of international unions.

It seems to me that is the way to catch these local disputes, and avoid strikes.

Talking very candidly, sometimes in local areas, such as New Jersey, we find there has been such a long history of differences and an-

tagonisms that in my judgment, very little is going to be resolved by local parties in the local area.

It can only be resolved by people not actively involved in the specific controversy, and people have not been involved in the local controversies over a period of time.

So what I am saying, in conclusion, is that this bill, when this bill is passed by the Senate, when we get this bone out of our throat that has been resting here for 25 years, when balance is restored and stability returned to the construction industry, we in the building trades unions are prepared to immediately support legislation that would have the effect of addressing itself to the real problems that confront the construction industry such as in bargaining, the area of bargaining, the scope of bargaining, wages, efficiencies, manpower training for the future, productivity, that is, all the issues that need to be resolved and should be resolved by men of good will, rationally and without the strife that is going on at the present time.

Senator NELSON. What about the charges of restrictive practices by unions, prehung doors for example, that were always in issue where you have a plant that produces a prefab building and the union insists the carpenter be paid for standing by because the door was prehung.

Mr. CONNERTON. Yes.

Senator NELSON. Or practices of the same kind of where you have the electrical fixtures in and the union would not deal with them. Is that kind of practice what you are talking about?

Mr. CONNERTON. Yes, Senator.

What I am saying is a good deal of progress has been made in the construction industry in the past 4 or 5 years. During the years 1971 through 1974, when the President's Construction Industry Stabilization Committee was in existence. Wage rates were brought down substantially, the area of bargaining was expanded greatly, and the Commission addressed itself to problems in local areas that could not be settled in local areas, such as that dealing with productivity and products, and so forth. And there was an enormous amount of tradeoff during that particular period.

So, there are in fact, really very few restrictions existing now out in the field.

What I am saying is if this body could be established on a permanent basis through authority of the Congress, then, that the people who understand the industry, the contractors and the unions at a natural level could address themselves to eliminating the few restricting practices that may exist in some areas, that would include, Senator, what you mentioned, because the truth of the matter really is, the construction industry needs restructuring from top to bottom.

The very notion that any individual contractor in this country is free to manipulate any way he wants, to establish his labor relations any way he wants to, just for a particular job, without regard to what the consequences are in the area, or nationally, it just seems to me is ludicrous.

It is just as ludicrous as these days for each local union in each local town to be able to bargain whatever he wants to bargain or any group of contractors bargain whatever they want to bargain without any

understanding what the impact is going to be on a regional or national level.

It seems to me these are the real problems that have to be addressed.

Senator NELSON. Now, Mr. Apruzzese raised some very specific points in his testimony respecting what he would consider bad practices. He mentioned the nuclear powerplant but you say they are coming to agreement on that. But the issue there raised is the same, whether it is some place else or whether it was a dispute between the subcontractor and the engineers he employs; therefore, they can picket and knock all the engineers off the job even though they are not involved with that particular subcontractor.

What is your comment on that?

No; I am asking your comment.

Mr. CONNERTON. I am sorry, I thought you were addressing Mr. Apruzzese.

Senator NELSON. No; he raised the question, gave several examples. One was the powerplants example of a contractor on the job with half a dozen engineers and dispute arises. He asserts, under this bill, they could picket and end up picketing off a job with 100 other engineers or whatever they may be who are not working for that particular contract.

Mr. CONNERTON. Yes.

Well, if Mr. Apruzzese is saying the union had a feather-bedding object, and that is what I assume he is saying——

Senator NELSON. No; I did not assume anything like that. There was a dispute between the union and a particular contractor who employs *x* number of individuals in a particular trade.

Mr. CONNERTON. Right.

Senator NELSON. He says that dispute arises on this job whether it was the nuclear powerplant site or what have you?

Mr. CONNERTON. Yes.

Senator NELSON. That then they could picket and take off the job all the other members of the same mechanical trade who are working with another employer and had no dispute at all.

Mr. CONNERTON. All I could say in response to that, Senator, is that is more of a theoretical problem than a practical problem under the circumstances Mr. Apruzzese related. Because if he is talking about a union site where the employees are union, it really matters not whether the employees of that general contractor would withdraw or whether they would seek to enlist the support of other contractors.

The total effect would be to shut down the work anyway.

The fact of the matter is that these contractors on a site are highly interrelated. For 3 or 4 days, for example, you may not need a particular trade or a particular trade could work by itself for 3 or 4 days, but that quickly comes to an end.

What I am saying is from a practical standpoint where they are talking about a union job and the rare case where a union does not have either a grievance procedure or no-strike clause in its contract, under those circumstances the practical effect would be exactly the same, where the union's collective bargaining agreement expires and it goes on strike for more wages.

The effect is the job shuts down whether it takes 3 or 4 days to shut down.

Senator NELSON. Have you finished?

Mr. CONNERTON. Yes.

Senator NELSON. All right.

Mr. APRUZZESE. I wish I could agree with Bob's characterization, what would happen to a job, 3 or 4 days it would go down anyway That is not the case and what I am talking about is not hypothetical.

I have approximately two pages of citations I would be happy to forward to this committee in my supplemental statement showing actual disputes, where the engineers take their men off every contractor in the job, people with whom they have absolutely no dispute, to put pressure on that general contractor.

They enmesh neutrals in disputes, not their own, to get their goal. They cannot do it under existing law. It is very clear—cases are legion, this new statute will allow them.

I submit I do not think Bob Connerton can take issue with that legal proposition.

He does not take issue with that.

Do you, Bob?

Mr. CONNERTON. My answer remains the same. That is to say, most unions are covered with either grievance procedures or no-strike provisions, in which he admits they cannot strike. That is 99½ percent out of 100.

As I indicated previously, Mr. Apruzzese has had a long history of disputes with engineers up in New Jersey. Why they took their clause out of their contract because of their long dispute with him I do not know, but this is a case that does not ordinarily arise.

I do know the country very well. I can say, for example, in the case of my union, I do not know a single case in the whole country in which we do not have a no-strike clause or grievance procedure in our contract.

So he is talking about a sport situation where there are very deep animosities that have existed for a long time between his contractors on the one hand and some local union in New Jersey. It has gone to the court of appeals two or three times.

Senator NELSON. If 99 percent of the contracts have no-strike provisions, under what circumstances would this particular bill be of any benefit?

Mr. CONNERTON. In most cases it would not, Senator.

It is not going to have a great effect. People are blowing it up. See, this particular article here [pointing]—chains, blood, slavery, and so on—it is not going to have that effect at all.

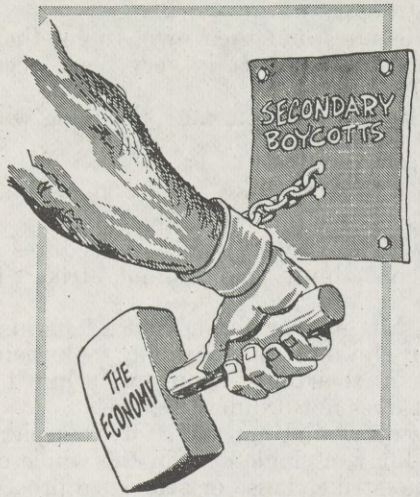
[The article referred to follows:]

[From the Washington Post, Tuesday, July 15, 1975]

C 20 Tuesday, July 15, 1975 THE WASHINGTON POST

"The Following Commentary is a paid advertisement" "The Following Commentary is a paid advertisement" "The Following Commentary is a paid advertisement" "The Following Commentary is a paid advertisement"

DECEPTIVELY SIMPLE OR SIMPLY DECEPTIVE?



Congress is currently considering two deceptively simple, innocent-sounding bills — HR 5900 and S 1479. These bills use language like "to protect the economic rights of labor" and "provide equal treatment of craft and industrial workers." Sounds fine, doesn't it?

In fact, these bills, if passed, would change current labor laws to eliminate safeguards that keep important construction projects moving while individual employees and contractors work out their own problems.

These bills would allow a construction union to force a general contractor or subcontractor off the project by picketing every contractor on the site, even those not involved in the disagreement. Can you imagine one construction union with enough power to shut down the construction of a project such as the Alaska pipeline—a 798-mile project?

Let us explain. On a construction site, several different contracting companies come together to build a project — plumbing contractors, electrical contractors, general contractors, just to name a few. And each of these companies is responsible for its own payroll, equipment, scheduling, and deals separately with one or more of the 17 building trades unions. If one company has a difference with its union, it tries to work it out while the rest of the companies do their part of the project. This way, the company and the unions with a disagreement are encouraged to work out their problems together. While the system isn't perfect, it works pretty well.

The people who want HR 5900 and S 1479 say industrial unions already have the ability to shut down an entire operation so why shouldn't construction unions? That's comparing apples and oranges. In an industrial company, there may be several unions, but they work their problems out with only one employer. On a construction site, as we said earlier, the unions bargain with each individual company. It is important to keep in mind that unlike industrial companies, construction companies work at several different places at one time. At each place they work with different other companies.

The people who want the bill are claiming that all companies that work on a construction project are a "joint venture" or — for the duration of the project — one company. In making this claim, they are calling an apple an orange. They figure if you have an apple (industrial companies) and an orange (construction companies) you can compare the two if you just call the orange an apple. Strange logic indeed.

IF THE BILL PASSES WE'RE ALL IN TROUBLE

No matter how this legislation might be rationalized, we see among the inevitable consequences:

- More strikes, more work stoppages, higher unemployment, now 21 per cent in construction.
- Even higher wages for the building trades unions now averaging more than $10 an hour and approaching $20 an hour in some cases.
- Fewer job opportunities for construction workers. This will be especially severe in the case of minority workers and contractors.
- Indefinite delay in the recovery of the construction industry in the United States, especially home building and most especially housing for low and middle income families.
- Higher construction costs and more inflation. Doesn't sound very fair, does it? Well it isn't, and that is why Congress has made the secondary boycott illegal for more than 28 years.

HERE IS WHERE IT HURTS

It's the consuming public, as usual, that suffers. You will pay more for housing and wait longer to get it. Have you priced a house lately? Remember "Project Independence" with all its power plants needed to make this country self-sufficient in terms of energy resources? Just how long are you willing to wait? In construction, time is money and you pay for time. And what about defense projects? Don't think they would be exempt from the problems HR 5900 and S 1479 would cause.

It is incomprehensible that there are those who would be actively seeking such detrimental legislation, at a time when the nation is so desperately attempting to get itself back on its feet again.

CLEARING THE AIR

The whole idea of collective bargaining is to maintain a balance at the bargaining table. This is not to protect companies or unions, it is to protect you, the consumer. If the balance shifts one way or the other, you're the one who suffers. The money that goes into construction comes right out of your pocket through taxes for government construction, or higher prices for private construction. Either way, you're the one who pays.

HR 5900 and S 1479 won't create new jobs, at a time when we need more jobs. They won't help us build important projects faster at a time when we must solve energy, housing, and defense problems. They won't reduce inflation in the construction industry at a time when it is running higher than ever before. And HR 5900 and S 1479 stand in the way of reaching a national goal of labor-management cooperation.

You may be doing your Senators and your Congressman — or Congresswoman a favor by calling their attention to this harmful legislation. They are busy people and cannot possibly know the details of all the bills under consideration. Many of them, for various reasons, support most labor endorsed proposals, and would feel inclined to vote for these bills. But HR 5900 and S 1479 have such far reaching potential to impose untair costs and burdens on so many, for the benefit of so few, that we and others in the construction industry—employing more people than any other—think the Congress should reject this legislation. And if they do not, the President should veto the bill when it reaches his desk.

The national associations listed below are opposed to HR 5900 and S 1479.

American Concrete Paving Association
American Farm Bureau Federation
The American Institute of Architects
American Retail Federation
American Road Builders Association
American Subcontractors Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Ceilings and Interior Systems Contractors Association
The Construction Industry Policy Committee, The American Society of Civil Engineers
Council of Construction Employers
Crane and Rigging Association
The Business Roundtable
International Association of Wall and Ceiling Contractors
National Asphalt Pavement Association
National Association of Home Builders
National Association of Manufacturers
National Association of Minority Contractors
National Association of Plumbing-Heating-Cooling Contractors
National Constructors Association
National Crushed Stone Association
National Electrical Contractors Association
National Labor-Management Foundation
National Lumber and Building Material Dealers Association
National Ready Mixed Concrete Association
National Sand and Gravel Association
National Small Business Association
National Society of Professional Engineers
National Utility Contractors Association, Inc.
U.S. Industrial Council

For further information contact: The National Action Committee on Secondary Boycotts,

1957 "E" Street, N.W., Washington, D.C. 20006

Mr. CONNERTON. All we are seeking by this bill is to establish a uniform labor policy on a particular job. It is not going to drive nonunion contractors out of business. They will still operate, still compete with union contractors. What we will say is building tradesmen will not be compelled to work side by side with nonbuilding tradesmen, side by side on the same job. That is all we seek.

We say it will tend to stabilize the present situation and eliminate many of the strikes going on at the present time across the country.

Senator NELSON. Go ahead.

Mr. APRUZZESE. Sir, just one or two comments on the last point, and if I may, Senator, I have just a few other comments.

I would like just to disabuse Bob Connerton or anyone else of the notion I am just talking about the Operating Engineers in New Jersey. That was an example.

I could talk about Teamsters or Boilermakers.

A good example, we had a situation on the same nuclear plant where there were 90 Boilermakers on the job. Of these 90 Boilermakers, 45 were working inside, 45 outside. It rained so there was no need to keep the entire crew of 90. The contractor wanted to keep the 45 that remained inside and let the 45 that remained outside go.

The union said everybody works or no one works.

They picketed the whole job.

Teamsters. There are Teamsters——

Mr. CONNERTON. Excuse me. Were they engaged in a secondary boycott at that time?

Mr. APRUZZESE. In the absence of a no-strike clause, they can walk off the job and they can picket the entire job of other crafts irrespective of the fact that there are no other boilermaker employers on the job. That is the whole point.

Mr. CONNERTON. I was simply asking: were the Boilermakers covered by a no-strike agreement in that case?

Mr. APRUZZESE. In that particular case, the Boilermakers had a no-strike clause.

Wait a second, Bob.

Their picket line was still effective to shut the whole plant down. And there is no guarantee and this is the problem, there is no guarantee that a contractor can get a no-strike provision. Absolutely none.

Mr. CONNERTON. There is a guarantee if the employees engaged in a strike that is in breach of a no-strike contract, the union is liable for damages and there is nothing in this bill that will in any way change that provision of present law.

Mr. APRUZZESE. Teamsters again, we have some notorious examples of situations with Teamster unions, this will shut down a whole job, shut down a whole job in the absence of a no-strike provision.

Now, let's talk about the situations where you get to a collective bargaining impasse. I mentioned that earlier. There is nothing to prevent any union from picketing if it so chooses an entire project, in a lawful legitimate collective bargaining impasse.

Currently under existing law they cannot picket employers for whom they do not work. That is not permitted. This statute will allow them to picket the whole job in an economic impasse situation.

Now, there are a couple of other thoughts that I want to offer, Senator Nelson, in comparing the construction industry with manu-

facturing. We have heard a lot about what this is, an integrated process that is the reason they need this right to picket. There are many manufacturing concerns, industrial concerns that do no trucking, do not employ people to drive trucks. They do it by contract with trucking concerns.

There are many manufacturing plants that have no janitorial services, they contract it out. There are some of them that do not do their own laboratory testing. There are some of them that will have component parts made elsewhere.

Now, if a manufacturer, obviously he can employ people to drive trucks if he chooses, but if he has chosen not to and he hires a trucking outfit, if that trucking outfit has a labor dispute and it has a strike, if it no longer performs work for that particular manufacturing concern during that strike, it cannot have the picket line visited upon it.

Conversely, if that manufacturing plant has a strike with its plant union, that plant union has no right to picket the trucking outfit unless the trucking outfit persists during the course of the strike to carry on that work.

What I am saying in essence is the manufacturing concern takes many of the things that it can do and has it done by independent employers, by independent contractual arrangements.

Now, no one suggests that there is a right to picket all those employers just because that is an integrated operation. However, in the construction unions, our friends in construction say that this must be the way.

I was interested in a statement of Mr. Biemiller this morning at page 2 where he says that by allowing the form of business organization, a matter within the employer's sole control, to determine the right of building tradesmen to strike and picket, that decision allows one side to a controversy to arrange its affairs as to give itself the maximum advantage.

Here we have Mr. Biemiller, who is director of the Department of Legislation of the AFL–CIO, saying that the contractor arranges his own affairs, so he can set up these arrangements.

Nothing is further from the truth. They would welcome the opportunity to employ directly every single building trade union and negotiate one agreement.

The pure fact of the matter is the building trades will not permit one employer to hire every individual craft. They just will not permit it.

Electricians work for electrical—excuse me—electrical employers, pipefitters work for mechanical contractors, and so on. It is not the choice of the employer, it is the choice of the union.

I know of no such agreement involving nuclear plants, Senator Nelson, as has been referred to by Bob Connerton. There may be an effort at exploring some type of new agreement.

I have not yet seen it. I consulted with Harry Taylor a moment ago who is the president of an association of multiple employer associations in the construction industry, he is not aware of it.

I might say I handle the labor relations on several nuclear plants and I have as yet not seen it.

I might also say that where there are any national agreements with international unions, many of these national agreements, while they

do provide for no-strike clauses, not all international unions in the building trades have a national agreement. There are some major exceptions, Operating Engineers being one.

Where there are national agreements, a national contractor can negotiate locally and that national agreement does not apply if there is an impasse over new working conditions. So consequently that clause does not get us out of the entire problem.

Your shopping center example, Senator Nelson, I thought was quite appropriate and I think Harry Taylor answered it quite accurately. If a subcontractor or general contractor is working on a clothing store within the shopping center and there are 25 or 30 other stores, if there is a labor dispute, that bill allows picketing at the site of construction and the entire job would be down.

If it is Mr. Connerton's position that that would not be the site of construction but rather the site of dispute is just in the clothing store, I would like to see that written in stone by the building trades.

I submit that is not their approach as I understand it for this type of legislation.

He mentioned that the building trades are not seeking any more power; they want to preserve the status quo.

The only way you preserve the status quo is not to do anything. Obviously they are trying to obtain something and, consequently, it has to be an addition to whatever power they have.

One comment and then I am finished, Senator Nelson, about this proposed effort to restructure collective bargaining, in the industry. If there is one industry in the United States that needs restructuring, it is the construction industry.

If something needs to be done, Secretary Dunlop thinks it ought to be done, the Administration and Congress think it ought to be done, it ought to be done and not piecemeal. We ought to look at the whole thing.

The observations about the possibility of getting the committee on collective bargaining together to try to right the ills of the construction industry, all of these efforts at voluntary handling of these problems unfortunately to date have never borne fruit. And one of the reasons, and we hit this all the time, it may not be the Laborers International Union—as a matter of fact, in our over 20 years of experience, our problem is not with the Laborers International Union, but we have to deal with a multiheaded monster, we have to deal with 18 unions, and if any one or two or three or four are that difficult to get along with, then the whole puzzle cannot come together.

I would suggest for the reasons I have submitted, Senator, this legislation not only is untimely, it is unnecessary, and it can only exacerbate the difficulties that exist, spiraling costs, fuel the inflation we already have, and for many reasons in my judgment it is highly inappropriate.

Mr. CONNERTON. Senator, if I could just make a brief comment.

As I understand the situation at the industrial site, certain trucking work was let out to teamsters, then the teamsters subsequently went on strike. They have the right to engage in a certain kind of picketing that was called ambulatory picketing, under the statute.

In the event that an industrial employer took over the work being performed by the Teamsters that went out on strike, then he would become an ally of the struck employer, and the union would be allowed to expand its picket to encompass that.

Following along with what Mr. Apruzzese was saying, however, if some of the maintenance work was being performed at the site by a maintenance contractor, that was part of the regular operation of the employer, then in the event that the industrial union had a dispute they would be permitted to picket the whole site, including the work being done by that employer.

I think that fairly reflects the state of the law.

We are finished, Senator. Thank you very much.

Senator NELSON. Just one more question. On the shopping center case that I raised a while back, and Mr. Apruzzese spoke to——

Mr. APRUZZESE. Yes.

Senator NELSON [continuing]. Do you agree with his interpretation that if you had a shopping center being built by a general contractor for sale or lease to building stores, hardware stores, groceries, what have you, and a contractor who is building the clothing store has a labor dispute, his sole responsibility in that center is to build the clothing store? Other contractors are building other parts of the shopping center, and have no disputes with their employees. The dispute arises with the employees and the employer working on the clothing store, building under the law. Under this proposed legislation, can they picket the whole site?

Mr. CONNERTON. My understanding, under those circumstances which you related, Senator, is that if a general contractor was given one building to construct and that work was either part union or part nonunion, then the site in that particular case would be the location where that one general contractor was operating.

Senator NELSON. Under the legislation you are talking about?

Mr. CONNERTON. That is correct.

Senator NELSON. Now, the general contractor is building the whole shopping center. And one of the buildings involved is still the clothing store. A dispute arises with one of the trades within the building store. There is no dispute with any of the other subcontractors who are working in all the other buildings.

Mr. CONNERTON. In my judgment, at that point the site would be the work being performed by the general contractor which would include whatever buildings were included in this contract.

Senator NELSON. So even though there was a dispute only within one building, no dispute with any of the other trades on any other aspect of any other work in all the other buildings, they could picket the whole set; is that what you are saying?

Mr. CONNERTON. That is my understanding, under those circumstances, Senator.

Mr. APRUZZESE. And that would apply vice versa, Senator, not only by the employees of the general being allowed to picket the subcontractors on the whole site, but if there was any subcontract problem, just a problem with one sub, that sub would picket the whole site. In other words, it works both ways.

If the general had a contract for the entire shopping center and the dispute was with a given sub, that union could picket the whole site or if the dispute was with the general—the same thing in other words, the dispute with any one employer on that job could visit a picket line on the entire project.

Senator NELSON. Do you agree with that?

Mr. CONNERTON. Under those circumstances, yes.

What we are asking here, Senator, is a uniform labor relations policy governing a general contractor and subcontractors. It seems to me if this bill was passed, that situation would not arise as frequently as it does at the present time, and we will return to the situation where there is a uniform construction policy, whether union or nonunion.

Most of the strife rises from mixing oil and water, mixing union and nonunion contractors.

Mr. APRUZZESE. I wish it were as simple as that. It just is not, Senator.

As I said, my experience is with entire union contractors and there is nothing further from the truth.

In the places where I have handled labor disputes and it covers a lot more than New Jersey, I have handled them all over the United States. We just have not seen the same construction sites.

Mr. CONNERTON. I might say you probably see them up in New Jersey through far more distorted glasses than I do.

Senator NELSON. You are going to file some supplementary material, are you not, Mr. Apruzzese?

Mr. APRUZZESE. Yes, sir. I think so.

Senator NELSON. Do you have any further comment you want to submit?

Mr. CONNERTON. I see Senator Taft came in.

Senator TAFT. Thank you.

Senator NELSON. I may even conclude this, I came back an hour ago.

Senator TAFT. I do not intend to ask any lengthy questions.

Senator NELSON. You can ask whatever you want.

Senator TAFT. I would like to ask permission to direct some questions in writing to the witness at a later time, to get their views.

Senator NELSON. Gentlemen, you would be willing to respond to questions by Senator Taft?

Mr. APRUZZESE. Certainly.

Senator TAFT. Thank you very much.

Let me understand the last question. You could on a site like that, have as many as 20 different employers and different unions, could you not?

One of them besides——

Mr. APRUZZESE. The whole job, precisely the point; that is why we are so opposed to it, precisely.

Senator TAFT. One of the conditions Secretary Shultz pointed out, Secretary Dunlop also talked about the other day, that is protecting the rights of the individual union, unaffiliated union. How can we do that under those circumstances?

How do we work it so it works?

Mr. CONNERTON. My understanding, Senator, is at the present time, that it would be illegal for the purpose of picketing construction sites for the purpose of removing the employees of an independent union contract.

Senator TAFT. If it were recognitional; that is what we went into this morning.

If it is not a recognitional strike, how would you prevent it?

Mr. CONNERTON. Any sort of difference that might exist, Senator, except one. That is to say where an independent union contractor was paying less than the scale area standards.

Senator TAFT. How about working?

Mr. CONNERTON. Standards—oh, I do not know whether it would apply to working conditions or not.

I guess it would depend on whether or not, Senator, the working conditions were economic in nature.

Under those circumstances, the union would be permitted to picket for area standards purposes but once the independent union contractor paid his employees up to area standards, then the union would be required under this bill to discontinue its picketing.

Mr. APRUZZESE. Could I try my hand in answering that?

Mr. CONNERTON. I would be glad.

Mr. APRUZZESE. Take a specific example, a general contractor hires several subcontractors to do a particular project. He has a particular desire to use and does use an independent union, for one of the subcontracting function or he may use a minority contractor who has a minority contract with a minority union. In either event, neither one of these unions is affiliated with the AFL–CIO.

Now, collective bargaining starts for a new contract. Now, the union knows very well while that contract with their general contractor is in progress, they cannot go upon that job and picket. If there is a no-strike clause. However—excuse me, if they do not have a no-strike clause, they can picket and say, "Get rid of that union contractor under this bill." Now let's stay with the current law. They now come up to collective bargaining and they say to this general contractor, who they know has used this independent union and want to try to see if they can stop him from doing that. So they ask him for a collective bargaining provision that says he will only deal with subcontractors who will have contracts with unions affiliated with AFL–CIO or he will not expect his men to work on jobs where there are non-AFL–CIO building tradesmen people. That is under current law lawful.

The *Essex County Carpenter's* case and *Dallas Building Trades* case, I cited this morning. Now if that general contractor, if he does not want to agree with that provision—if he does agree, he can no longer use the independent union or minority contractor. He now says, "I refuse to go along with it." Consequently, if it is a laborer's union or carpenter's union, they can strike him. They either succeed or do not succeed.

If this bill is passed, they are not limited to just striking that employer—they have the right to strike more than him alone. They strike anybody on the job where he is currently working, so every single job that that contractor has, they can strike every other subcontractor on that job and bring every job down. So that they will, in effect, then be able by that strategy to eliminate the independent union or the minority contractor. So that is the way they are going to be able to do it, is to be able to enmesh neutrals in disputes that are not their own and bring pressure to bear on every single contractor on the job, and that is the way they will go about doing what they want to do.

They have a right to do it under current law if they can use their test of strength against the employer for whom they work, but that is not succeeding apparently, or that is not the type of tool they want to use.

They want to be able to strike the entire job.

Senator TAFT. Well——

Mr. CONNERTON. I would like to answer that. To simplify, Senator, first let's get the minority issue out of here.

In the sentence that we agreed to, a specific revision in the bill would protect workers because of race, nationality, and creed, I think even sex, so a union would not be able under this bill to eliminate a man because he is black, or eliminate a contractor from a job because he happened to be black.

Senator TAFT. Eliminate a union if it happened to be mostly black and if it was an independent union?

[Laughter and applause.]

Mr. CONNERTON. I do not believe that the union would have the right to picket for the purpose of removing anyone from the job, and most specifically not for the purpose of removing any black from the job.

And I am suggesting the union does not have that right under present law and to reaffirm——

Senator TAFT. Would that provision apply, though? Would that provision apply to the independent union I am talking about which is mostly black?

You are talking there about a union not discriminating against an individual.

Mr. CONNERTON. As I understand the present law, Senator, under section 8(e), there is a proviso which the Congress placed there in 1959, which permits unions to enter into a subcontracting clause agreement with a general contractor, providing that the subcontractors have an agreement with the unions. That is one situation. So that under section 8(e) at the present time we would be permitted to engage in picketing for the purpose of obtaining that type of a subcontracting clause.

What I am saying is that under the provision of our bill, we would not be able to picket a construction site to remove a minority worker.

We would be able under present law to picket that individual contractor for area standards purpose, but you could not expand the picketing to all employers on that particular site.

Forgetting the union contractor issue, and referring to section of the Taft-Hartley Act, under the circumstances where there is a valid union shop agreement covering the employees, then the unions could require that the individuals involved under the required initiation fees and dues after 7 days, but could not for any other reason cause those minority employees to be removed from the construction site.

Senator TAFT. I understand that.

Thank you very much, gentlemen. We appreciate your testimony here today.

I am sorry I was late. I was running into a lot of conflict.

Mr. CONNERTON. Thank you very much, Senator.

Mr. APRUZZESE. Thank you.

[The prepared statement of Mr. Connerton follows:]

Statement of Robert J. Connerton, General Counsel
Laborers' International Union of North America
AFL-CIO
Before the Labor Subcommittee of the
Senate Committee on Labor and Public Welfare
in Support of
S.1479, a Bill to Protect the Economic
Rights of Labor in the Construction Industry
by Providing for Equal Treatment
of Craft and Industrial Workers

July 15, 1975

* * * * * * * *

My name is Robert J. Connerton, and I am appearing here today together with Jack Curran, on behalf of the Laborers' International Union of North America, AFL-CIO, a union of more than 650,000 members, 550,000 of whom are employed by construction contractors, and subcontractors in all branches of the construction industry in the United States and Canada, in over 1,000 Local Unions. Our membership consists of all races, colors, and creeds, including approximately one-third Black, and 10 % of Spanish extraction. All of our construction industry members are covered by collective bargaining agreements which include provisions for pension protection.

I am here today to present the view of the Laborers' International Union in support of S.1479, a bill to protect the economic rights of labor in the construction industry by providing for equal treatment of craft and industrial workers.

The roots of the problem that make necessary the enactment of the legislation under consideration lie in the imbalance in the

development of the law under the Labor-Management Relations Act of 1947 with regard to multiple construction contractors and subcontractors working at a common construction site.

The issue posed has been whether picketing directed mainly at an employer with whom a union is engaged in a legitimate dispute, which has an impact on other employers at the work site, will be deemed illegal activity prohibited by § 8(b)(4)(B) of the Act. The problem arises simply because common situs situations are an everyday fact of life in the construction industry where contractors, each with its own employees, work side-by-side on a functionally integrated basis on the same construction project.

In 1951, in Denver Building Trades,[1/] the Supreme Court established a ban on common construction situs picketing which can be avoided only under the most narrow and limited of circumstances. In Denver, all of the employees were members of unions affiliated with the Denver Building and Construction Trades Council, save those of the non-union electrical contractor to whom the general contractor had subcontracted work. When the Council picketed the job as "unfair," it was charged with engaging in illegal secondary activity under then Section 8(b)(4)(A) of the Taft-Hartley Act. As a defense, the unions argued that they were engaged solely in a primary dispute with the general contractor to force him to make

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1/ NLRB v. Denver Building and Construction Trades Council, 341 U.S. 675 (1951).

the project an all-union job. Despite the high degree of interrelation between the contractors at the site, the Court found that the picketing had as an object the illegal purpose of forcing the general contractor to "cease doing business" with the non-union electrical contractor by terminating the subcontract. The Court stated that it was not necessary to find that the sole object was to force a termination of the subcontract, but it was sufficient to find that it was an object. But in Denver's companion case -- International Rice Milling[2/] -- arising in an industrial setting, the Court gave approval to secondary activity arising at the primary situs of a labor dispute when strikers appealed to deliverymen not to enter the struck plant site.

Ten years later the Supreme Court rendered its General Electric[3/] decision which held that a contractor performing maintenance work in the industrial sector could insulate its workers from picketing by establishing a gate reserved for them, only if they were performing work tasks unconnected to the normal operations of the struck industrial employer on the job. Subsequently, however, the NLRB declined to apply the General Electric "work-related" standard to a reserved gate in the construction industry for to do so -- in its opinion -- would have been to overrule Denver Building Trades in which the Supreme Court specifically refused to find that the

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2/ NLRB v. International Rice Milling Co., 341 U.S. 665 (1951).

3/ Electrical Workers Local 761 v. NLRB, 366 U.S. 667 (1961).

close interrelationship between contractors and subcontractors on a construction site amounted to a common undertaking which destroyed the neutrality of the secondary employers.[4/] Thus, construction site picketing was again subjected to stricter standards than those applicable to other industries.

The Supreme Court decisions discussed above, and the Board-promulgated Moore Dry Dock standards have had a particularly harsh impact on the building and construction industry, in which the transitory and sporadic nature of employment makes union solidarity of paramount importance.

For one thing, the impact of Denver has been to increase the use of the subcontracting system in the construction industry to avoid and escape union standards and conditions. Hence, unionized general contractors are economically encouraged by Denver to employ non-union subcontractors whose wages and conditions are substantially below those applicable to the general contractors' employees. Such subcontractors are often engaged in work previously performed by employees of the general contractor under union conditions.

In addition, the enemies of collective bargaining in the construction industry have hidden behind a new "shell game" of shifting corporate forms so that construction companies which are party to union contracts are now able to establish non-union alter ego companies which are able to bid on work sheltered from their

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4/ Building and Construction Trades Council, (Markwell & Hartz, Inc.), 155 NLRB 319 (1965), aff'd 387 F.2d 79 (5th Cir. 1967).

otherwise legally binding union obligations. In a series of recent cases, the NLRB once again engaged in unequal treatment of construction workers by refusing to "pierce the corporate veil" in the construction industry and look at the economic realities of such manipulations. By doing so, it has encouraged employers in the construction industry to relieve themselves of their collective bargaining responsibilities by encouraging unionized employers to submit bids as contractors or subcontractors under new corporate names to perform work in utter disregard of their basic union obligations established through their regular corporate entities.[5/]

The foregoing maneuver is but one of many similar devices. Indeed, in light of the realities of construction employment, without the opportunity to attack non-union conditions at the job site other statutory rights and remedies become wholly meaningless. Hence, for example, the problems of proceeding through the time consuming NLRB election processes are made more difficult if not impossible by the short-term nature of construction employment; and even when elections are finally held, the employer is free to refuse to bargain until the project is completed; or else, is free to precipitate a strike during which the employer may permanently replace strikers with strikebreakers, while the hapless union remains powerless to appeal for the support of fellow unionists working at the project. The fact is that it was the peculiar

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5/ See for example, Gerace Construction, Inc., 193 NLRB 645 (1971), and Peter Kiewit Sons Co., 206 NLRB No. 66 (1973).

nature of the construction industry which impelled Congress to enact Sections 8(e) and (f) of the Act in 1959 which authorize union signatory subcontracting agreements in construction as well as voluntary pre-hire agreements. These statutory provisions, however, have not been sufficient to overcome the damage which has been inflicted by the onerous restrictions upon job site picketing imposed by the Denver decision.

The functionally interrelated nature of the construction industry, and the necessity that construction unions have rights equal to those enjoyed by unions at industrial job sites, were both demonstrated recently by the NLRB's decision in International Union of Operating Engineers, Local 12 and Griffith Co., 212 NLRB No. 4 (1974). There the Board held that union action against a general contractor which had undertaken under a master construction agreement to cease doing business with, and be held liable for, the health and welfare and pension fund delinquencies of subcontractor parties to the master agreement, did not violate the secondary boycott provisions of the Act.

In Griffith, the Board took cognizance "of the great strides made by [construction] unions and employers in the area of fringe benefits ... ." It also recognized that a "substantial number of the union's members work from job to job and from contractor to contractor with no certainty that they will remain employed in any particular unit for any period of time." The Board concluded that "the impact of many delinquent subcontractors doing business

with impunity in this industry would be destruction of the entire trust fund plan."

The same ruinous result is, of course, occurring with greater and greater frequency in construction because non-union subcontractors "[are] doing business with impunity." Hence, to the presently significant extent that unionized construction workers with lengthy ties to the construction industry are replaced by non-union workers employed by non-union subcontractors, or must themselves accept non-union employment rather than become unemployed, they are cut off from the industry-wide fringe benefits that have been established for them through collective bargaining over the years since their employers do not participate in such labor management benefit plans.

Indeed, the actuarial assumptions underlying the recently enacted Employee Retirement Income Security Act depend upon the continued stability of the unionized construction sector. At the rate we are moving, through the application of artificial legalisms enabling the easy shedding of union obligations by union contractors, while unions are now legally powerless to protest, such assumptions will soon be shattered beyond repair. Must building trades unions sit idly by, or engage in picketing as ineffective as picketing in a park, while their many billions of dollars of private pension commitments are to be dumped into the laps of the Pension Benefit Guaranty Corporation?

As these hearings have thus far fully demonstrated, the building and construction industry -- the largest in the land -- with over 300,000 employers and three and one-half million workers is

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caught up in the midst of a national open shop campaign of enormous dimensions, reminiscent of the program launched by the big industrialists and their construction employer allies in the 1920's under the patriotically titled "American Plan," which resulted in the virtual destruction of the Union building tradesmen.

Today, the same anti-union crowd, the major industrialists, operating through Business Roundtable, the National Association of Manufacturers, the Chamber of Commerce, the Associated General Contractors, the A.B.C., and certain other contractor groups, have launched a similar campaign of enormous proportions under the name of "merit shop" or "open shop" which is designed to destroy the union building trades movement.

By their own testimony, they have succeeded in increasing the non-union share of the construction market from the previous 20 percent, to more than 40 or 50 percent. They are attempting to seize upon the present national tragedy of depression in the construction industry, which suffers from over 22 percent unemployed nationally, and in some areas 60 percent to 70 percent, and in some trades, such as the laborers, over 40 percent nationally, to destroy construction standards, to make workers compete for the few available jobs at depressed wages, and thus break the back of the Building Trades movement. What is not clearly understood by those who do not watch the situation closely, is the virulence of the campaign. For example, the Associated General Contractors has conducted

national, regional and local seminars, and distributed kits to its members showing them how they can legally shut down their union operations, escape their union obligations, and set up non-union operations, with the union even being prohibited from defending itself by picketing the union employer, before he goes out of business. Their legal maneuvers, such as seeking to apply the anti-trust laws to break up trade unions and attempting to hold International Unions liable for conduct of their affiliates, are all part and parcel of their campaign to undermine and destroy the labor movement.

We have heard the argument made here that this is not the proper time for enactment of this legislation. During the Great Depression of the 1930's, Congress dramatically enhanced the organizational rights of employees through the enactment of the Wagner Act, because through long, sad experience it learned that protecting union organization, preventing wage depression and competition, and encouraging collective bargaining were essential parts of the antidote to the economic disease then afflicting our land. The same principle is at stake in connection with this legislation. The realities of life in the construction industry today, as you have heard from many of the employer witnesses, is that the industry is presently subject to the most massive assault on labor standards in history, which seeks to destroy the stability and coherence that trade unionism has brought to construction employment. There will never be stability in this industry so long as

hundreds of thousands of employers on literally millions of projects are free to play the game any way they choose, regardless of the consequences of their actions. Sound public policy cannot permit any one of more than 300,000 employers on hundreds of thousands of construction projects to be free to stack the cards any way they want on millions of projects, and then deal the cards without permitting building tradesmen to at least cut the deck.

Under these circumstances sound public policy dictates at a bare minimum that as in a factory situation, the project should be treated as a unitary whole for the purpose of permitting union workers to appeal for support to their fellow tradesmen employed thereon.

Much has also been said here about the results of local bargaining in the fragmented construction industry. Secretary Dunlop correctly indicated from his neutral but expert vantage point that local strikes against union contractors for higher wages at the expiration of collective bargaining agreements would not be affected one way or another by the passage of S. 1479.

Perhaps the matter should rest there, but this issue points up more than any other the utter folly of the position that each individual contractor on each project in this country should be free to manipulate his labor relations in any way he sees fit.

Mr. Cleary of the AGC ascribed the problem of high wages -- in largest measure -- to the inability of International Unions to control their affiliates. This of course was not always the case.

Prior to 1960 International Unions played a substantial role in local bargaining. But you will recall that in 1958 and 1959 the AGC was vigorously supporting the efforts of the Chamber of Commerce and others to impose restrictions upon the control which International Unions had hitherto exerted over their affiliates. At that time, the battle cry was that International building trades officials were corruptly negotiating "sweetheart contracts" to the detriment of the local membership. Knowing outside impartial observers immediately disputed that claim. They suggested that International Unions removed from the immediate scene could call for local union restraint, for locals not to take momentary advantage, to judge a local situation within the national perspective, and to consider the long-run interests of the union, its membership, the industry and the nation.

I recall at the time informing AGC representatives that they were being schizophrenic in urging the passage of so -called "Bill of Rights," trusteeship and other restrictive provisions that would destroy the International Unions' salutary, moderating influence upon local bargaining. Apparently mesmerized by the Chamber's propaganda, they proceeded to enthusiastically mimic its slogans which resulted in undermining of International Unions' influence on the conduct of local negotiations.

When the Landrum-Griffin law was enacted, the AGC acted as if nothing had happened and continued to request International Unions

to intervene in troubled Local situations. It appeared to be astounded that the Act's provisions had weakened the hand of International Unions. The AGC and other national contractor groups urged that legislation be introduced to correct this effect.

But, of course, the damage had been done with untold cost to our society. Without the steadying hand of International Unions in bargaining, each local unit and area proceeded to drift off on its own.

Secretary Dunlop has told you, during the controls period, significant progress was made in rationalizing the construction industry on such matters as the geographical and structural scope of bargaining, wages, fringe benefits, working conditions, etc.

My point is that this rational system worked and worked well in large measure due to the active role played by International Unions.

And now that statutory controls have ended, certain persons are urging a continuation of that system on a voluntary basis. I can only express my personal view, but I am convinced that if International Unions felt relatively secure -- in a stabilized situation -- with the reversal of Denver, they would be agreeable to a voluntary continuation of that system, and continuing with union national contractors the long overdue rationalization of the construction industry. Of course, it would require that the Landrum-Griffin Act be amended. And of course, International Unions, by such intervention,

could not be held liable for the acts of their affiliates.

You may not be aware, but as part of this "hate and bait" campaign of the A.B.C. and Chamber of Commerce, a concerted legal campaign is being waged to overturn long-established law, including that which hold that International Unions are not responsible for the actions of their Local Unions unless authorized or ratified. As part of this campaign they persuaded the NLRB General Counsel to issue a complaint against four International Unions, including my own, in Local situations. In our case, the Administrative Law Judge ruled that simply because the International Union tried to conciliate a local dispute, should not render it liable for the Local' subsequent conduct of which it had no knowledge.

My point here is that such "schizophrenic" employer behavior can only have the necessary effect of discouraging International Unions from even discussing intervention in local bargaining situations. There is neither rhyme nor reason for the contractors' actions, unless you conclude as we do that in reality the common thread is a desire to destroy the building trades movement entirely by one means or another.

We need to inject a sense of rationality into this chaos. Passage of S. 1479, treating a construction project as an integrated unitary whole would be the first step in the right direction.

With the project situation stabilized, I am convinced that the AFL-CIO Building Trades Department and its affiliates would lend

their cooperation to this Committee, Secretary Dunlop and interested contractor groups, to address themselves to the larger basic issue of reforming the structure of the construction industry, in order to meet the future needs of this nation.

* * * * * * * * * * *

Senator TAFT. Meeting is adjourned.
[Whereupon, at 3:25 p.m., the meeting was adjourned.]
[Appendixes follow:]

APPENDIX A

THE AMERICAN INSTITUTE OF ARCHITECTS

William Marshall, Jr., FAIA
President

July 10, 1975

The Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the American Institute of Architects, the national society for the architectural profession, I would like to express our views on S.1479.

S.1479 would amend Section 8(b)(4) of the National Labor Relations Act in order to legalize common situs picketing at construction sites. The law now allows a construction union in dispute with a contractor on a job site to establish a picket line and shut down the work of that contractor until the dispute is settled. The other contractors and subcontractors on the site who are not involved in the dispute may continue working.

If S.1479 were enacted, the picket line could shut down the work of all contractors on the site, even those not involved in the dispute. In addition, the legislation appears to permit a union engaged in a dispute with an employer on a job site to extend its picketing to other job sites where that employer is working. This bill is clearly a legalization of secondary boycotts. It would remove the protection of innocent, neutral parties which now exists under the law, pulling them into disputes not of their own making and over which they have little or no control.

Delays in construction can only result in increased costs for all concerned -- contractors, owners, architects, engineers, and, ultimately, the public. This is an undesirable situation under any circumstances, but even more so during times of economic uncertainty. Construction delays are a waste of the nation's resources and deprive the client -- whether public or private -- of the use of the building. In times of energy and critical materials shortages, we should strive to prevent such excessive waste, not add to it.

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The cost of construction has increased dramatically over the past several years and unemployment in the construction industry currently exceeds 20 percent. Excessive construction costs are already depriving many low- and moderate-income Americans of badly-needed housing and other facilities. Moreover, increased costs resulting from delays are never recaptured by any of the parties directly or indirectly involved in the labor dispute. The American Institute of Architects opposes S.1479 because we believe that legalizing secondary boycotts at construction sites will materially interfere with the orderly construction process, to the great detriment of the construction industry and, indeed, of the country.

One argument put forth in support of S.1479 is that the enactment of this legislation would result in faster strike settlements. The conclusion one must draw from that is quicker settlements will occur only because employers will be powerless to resist union demands -- an unbalanced condition which is not in the best interests of the public, the employers, and ultimately, we believe, not in the best interests of the union members themselves.

Another important concern arises from an ambiguity in the language of the bill -- that is, the possibility of product boycotts becoming primary causes for strikes. It is not clear from the language of S.1479 whether the use of fabricated products which cut into a union's traditional on-site work could not result in a union's "refusal to perform services" at the building site. Obviously this would be a most undesirable situation, one which would further increase costs and which would place a burden on the owner and his architect by depriving them of the free choice to select the most appropriate and economical building materials and systems. If this is not the intent of the legislation, and we sincerely hope it is not, we recommend that the language be clarified.

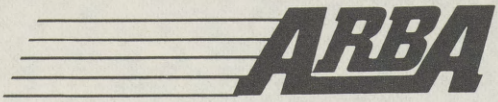
The Institute is committed to working with all elements of the construction industry to promote legislation that will be responsive to the public interest and will serve the construction industry as well. We think it is important to emphasize that if S.1479 is approved by this Congress, it will not serve these purposes. Rather, legalization of secondary boycotts would destroy any reasonable balance of power between the parties involved in the collective bargaining process. It would give the building trades unions absolute power to control the construction process. Unlike manufacturing companies, the cost of labor stoppages can almost never be passed on to future consumers; therefore, the power to destroy the economic viability of an individual facility by increasing its cost of construction becomes absolute.

The Institute is firm in its conviction that no special circumstances exist for granting the building trades unions an exemption from Taft-Hartley prohibitions against secondary boycotts. From considerable experience and observation, the Institute believes that the building trades unions presently have ample means at their disposal to insure fair dealings with contractors and subcontractors. Evidence of this is easily found in the sharp increases in union wages and benefits over the past several years, even during the current period of severe depression in the construction industry. This is ample proof that the building trades unions require no additional leverage against employers, which this legislation would certainly provide.

We would appreciate the inclusion of this letter in the hearing record.

Sincerely,

William Marshall, Jr., FAIA
President



Statement

of the

American Road Builders' Association

to the

UNITED STATES SENATE
Senate Labor and Public Welfare Subcommittee on Labor

Re: S.1479

Submitted by:

Daniel J. Hanson, Sr.
Executive Vice President
American Road Builders' Association

July 24, 1975

The American Road Builders' Association appreciates this opportunity to submit comments in opposition to S.1479. ARBA is a national organization embracing all segments of the transportation construction industry. Our membership includes approximately 5500 firms and individuals; including contractors; material producers and suppliers; manufacturers of construction equipment; transportation planners and design engineers; federal state, county and public officials; educators and student members.

S.1479 purports to protect the economic rights of labor in the building and construction industry by providing equal treatment of craft and industrial workers. In the case of the Davis-Bacon minimum wages, labor insists that construction employment differs substantially from industrial employment. They, thereby, attempt to justify the enormous differential between industrial and construction wages. S.1479 proposes that craft and industrial workers be treated equal in order to protect the economic rights of construction craft employers.

This legislation involves common situs picketing and would legalize secondary boycotts within the construction industry. Secondary boycotts are strikes or picketing to force a cessation of business relationships between a firm with whom a labor union has a dispute and other neutral firms who are not involved in the dispute. S.1479 would permit unions to picket and shut down a complete project over a dispute with any one of the many subcontractors on any given project.

We believe that the provisions of S.1479 will lead to more strikes and more work stoppages and drive the costs of construction even higher. Unions now have the right to picket a contractor with whom they have a legitimate dispute. To further enlarge this power to encompass all contractors and subcontractors on any given project, despite the fact that they are not involved, is both unrealistic and highly undesirable.

Many illustrations of the chaotic consequences which would result from the passage of S.1479 can be cited. Let us point out only one that will stymie the current efforts of the Department of Transportation and the Federal Highway Administration to enable more minority contractors to participate in federally aided transportation construction projects.

Under Title VI of the Civil Rights Act of 1964, the Department of Transportation issued Regulation 49CFR21 (DOT order 4000.7) "Minority Business Enterprise Program" dated March 26, 1975. The Department of Transportation records indicate that less than one percent of the dollar value of Federal-aid construction contracts were awarded to minority business firms in the Federal-aid Highway Program during fiscal year 1974. The overwhelming majority of available minority firms are non-union. The Department of Transportation is currently strongly encouraging that prime contractors employ minority business firms as subcontractors or as joint-venture prime contractors.

S.1479 would permit the unions to shut down an entire project. This would not be due to racial discrimination, which would be prohibited under this Bill, but simply in order to unionize the minority firms. In the AFL craft unions this would involve picketing and strikes of a complete project. Each individual craft union would have to satisfied that each employee of the minority contracting firm was in good standing with the union and that the firm was in "signed agreement" with each AFL union craft. Considering negotiating time and the fact that negotiations with each craft might not take place concurrently, the project could be completely shut down for an entire construction season.

Unions now have the right to picket and unionize any single contractor. On the other hand, why should we legislate to permit unions the phenomenal power to picket and shut down complete projects? This would not only disrupt employment but also cause irreparable economic damage to the other contractors and subcontractors working on the project. The time delays and economic losses associated with S.1479 are astronomical!!!

First of all, there is no similarity between a manufacturing plant and an outside construction project. The manufacturer is a single employer and he deals with any number of unions, but there is still only one employer involved. A strike against that employer or a picket in front of the plant can lawfully shut down the entire plant. The owner or manager of the plant has complete control over his labor policies. It is his company that has the labor dispute, not some other independent employer over whom he has no control.

A construction project, on the other hand, is a place at which many independent contractors, subcontractors, and their respective employees and unions are located. The proponents of S.1479 seem to think that there is only one single all-powered employer on every construction job who determines the labor policy of everyone engaged on the work site. This is simply not a true fact.

It is argued that a contractor who is involved in a joint venture, or who awards a sub-contract, has ample opportunity to know whether union and non-union men are going to work together. They should be able to anticipate whether trouble is likely to result from this "mixed marriage". Since the contractor has the option of avoiding these troublesome situations, it is argued that he must take the responsibility for them when they occur. He must anticipate that strikes and other labor strife will occur if, by his

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prior actions, he has set the stage for such labor disputes. We know for a fact that the highway contractor does not have this degree of freedom in the selection of subcontractors and others who will share the job-site with him.

The highway contractor is bound by Federal and State laws and numerous regulations which control his actions. The construction of a segment of highway may be divided among two or more prime contractors, all of whom are selected by competitive bidding. The contractor, at the time he submits his bid, does not know who will share the job-site with him, nor does he have any control over the labor practices of other contractors and sub-contractors.

An excellent example of such common situs-sharing is the situation in which one contractor is performing grading operations and another contractor is building bridges. Another contractor may be building other structures and all operations can be moving forward at the same time. We strongly oppose the principle of common situs picketing and urge that S.1479 not be passed. It is a piece of counterproductive legislation, in our opinion. In closing, Mr. Chairman, the American Road Builders' Association again expresses its appreciation of this opportunity to present our comments in opposition to S.1479!!!

STATEMENT OF THE

AMERICAN RETAIL FEDERATION

on

COMMON SITUS PICKETING
S. 1479

Before The

Labor Subcommittee
Committee on Labor and Public Welfare
United States Senate

by

John W. Noble, Jr.

July 21, 1975

AMERICAN RETAIL FEDERATION
1616 H ST. N.W., WASHINGTON, D.C. 20006

Mr. Chairman, Members of the Committee, my name is John W. Noble, Jr. My statement is on behalf of the American Retail Federation. Through its state retail association affiliates in 50 states and the District of Columbia, and 30 national retail association affiliates, the American Retail Federation represents nearly one million retail establishments employing over eleven million employees. These member companies range from the largest corporations to the smallest "mom and pop" stores scattered throughout the nation.

I am an attorney engaged in the practice of labor relations law, admitted to practice in the District of Columbia and Illinois, and admitted to the bar of the United States Supreme Court. A partner in the law firm of Friedman & Koven, Chicago, Illinois, I am currently Vice Chairman of the Illinois Commission on Labor Laws, having been reappointed to the Commission annually since the first appointment by Governor Richard Ogilvie in 1969. My firm is also Labor Counsel to the Illinois Retail Merchants Association. I have served in the United States Government for more than eight years in the Federal Bureau of Investigation and with the National Labor Relations Board at its St. Louis Regional Office and at its Washington, D. C. national headquarters.

The subject matter of S. 1479, the most recent of many

construction industry common situs picketing bills, 1/ is not a new one. It has many of the aspects of H.R. 100, introduced in the 91st Congress, and other bills in the Senate and House over the years. They have been examples, I suspect, of the seesawing efforts of organized labor to gain the quantum of leverage enabling it to produce the labor relations results most helpful in achieving its purpose. S. 1479, say its sponsors, would produce the effective picketing of an offending employer in the construction industry. The facts of what this bill will accomplish may be examined most effectively by projecting its effect into a setting in which, if enacted into law, it will operate.

Assume a major retailer or a shopping center developer engaged in the construction of a retail facility in any American community. In order to develop it, the developer must, after engaging the site, enter into contractual relationships with numerous contractors as well as with numerous subcontractors either directly or through the primary contractor. The initial construction effort which follows is directed toward the excavation of the area ultimately to be occupied by the facility or shopping center. In the normal course of events, this work is done by employees represented by an affiliate of the International Union of Operating Engineers. Forms are then set up for the foundation, frequently by a contractor employing members of the International Laborers Union or, in some instances, by a contractor employing workers represented by the Carpenters Union. After the establish-

ment of the forms, the contractor whose employees are represented by the Cement Masons Union or a similar craft begin pouring the concrete into the molds. The construction of the facility proceeds in a similar fashion. Without recounting all the elements of the erection of a project the size of a modern sprawling retail facility or shopping center, suffice it to say that many contractors employing many employees represented by many craft unions will be working on the site at any given moment from the date the first shovel of earth is put away by a civic dignitary to the time when the same civic dignitary cuts the ribbon at the grand opening.

Each union representing employees working on that site should have, and under current law now has, during the construction the option of exercising lawful economic sanctions in the event a dispute arises under the existing labor agreement. The same is true should a dispute arise based upon the employer's failure to reach a contractual understanding with the union representing the employees. This economic sanction has traditionally taken the form of a withdrawal of services from the offending employer accompanied usually by the establishment of picketing designed to advise those who would do business with the offending employer that he has breached a contract or failed to agree to one. Its hoped-for effect has been to induce, directly or indirectly, the voluntary withdrawal of services by employees of employers who do business with that offending employer, but who

are not a party to the dispute. The law, as it is currently reflected in the National Labor Relations Act, and applied by the National Labor Relations Board and the federal courts, prohibits a union which exercises legitimate sanctions against an offending employer from extending its pressures to the numerous other unoffending employers who also do work on the site.

Clearly, a picket line which interdicts all construction on the site will be substantially more effective in bringing the offending employer into compliance than will economic sanctions limited to the employees of the single employer. However, while a union is given the right to picket an employer with whom it has a dispute 2/ there is no mandate requiring that such picketing must be successful.3/ Additionally, both the National Labor Relations Board and the federal courts have recognized the right of neutrals to be free from the pressures of such activity. The question, then, is not one of effectiveness. S. 1479 would undeniably provide construction trade unions with a substantially more effective tool. The issue does become one of the propriety of involving the numerous unoffending employers who desire to maintain a commitment to the construction project during a dispute in which they are not otherwise involved. If S. 1479 becomes law, unoffending and uninvolved construction employers stand a substantial risk of numerous interruptions in their construction goals. These goals, the members of the committee undoubtedly realize, are already tightly constrained by such vagaries as seasonal conditions and the present economic restraints

throughout the construction industry. The obvious potential of S. 1479, therefore, is to increase the possibility of major, rather than minor, labor disputes in the construction trade at a time when economic conditions necessitate increased productivity and economic predictors project a national unemployment rate of 9% of the available work force.

My presentation to this point has not centered on the legal aspects of this amendment to Section 8 (b)(4) of the National Labor Relations Act.4/ This has been so, not because there are not legal consequences to such an amendment, but because in the year 1975 the American Retail Federation and I believe that the economic consequences will far outweigh any legalistic arguments in determining the recommendations of this Committee.

It would be, I believe, most helpful to examine the history of common situs picketing in the construction industry in order to evaluate the present status of the law, the considerations which have been prominent in attempting to reach a balance in a common situs situation, and most importantly, to properly evaluate the identity and effect of the changes S. 1479 would prompt in the existing law in the construction industry and in the economy as a whole.

In 1947, Congress amended the National Labor Relations Act by enacting the so-called Taft-Hartley Act which proscribed for the first time union unfair labor practices including secondary boycotts. The late Senator Taft, then Chairman of this Committee, explained the ban by stating:

> "This provision makes it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees . . . It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our Committee heard evidence for weeks and never succeeded in having anyone tell us the difference between different kinds of secondary boycotts."5/

Section 8 (b)(4)(B) as it now exists, prohibits forcing a neutral employer to cease doing business with a primary employer through illegal means.

> "The gravamen of a secondary boycott is that its sanctions bear not upon the employer which alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel and to stop business with the employer in the hope that it will induce the employer to give into his employee's demands."6/

A critical problem of both the National Labor Relations Board and the federal courts in interpreting Section 8 (b)(4) has been identifying the existence of the prohibited object which distinguishes protected primary activity from illegal secondary activity while, at the same time, maintaining the mandated Congressional balance between the legitimate interests of unions and neutral employers.7/ That problem is compounded in a common situs situation where the primary and neutral employers are present at the same location. While, theoretically, the existence of the prohibited object or intent is determinative as to whether any activity comes within the ban of Section 8 (b) (4) (B), the "object" criteria is far too vague to apply in

the real world. Both the Board and the courts have recognized that every picketing union hopes, even in the rare case it does not intend, that all persons, including neutral employees, will honor its picket line. Accordingly, both the Board and the courts have sought objective standards to determine whether a particular union activity is primary, and thus protected, or secondary and violative of Section 8 (b)(4).

Initially, the Board established the ownership of the picketed premise as being determinative of the existence of a violation. If the premise were a primary situs, i.e., it was owned by the offending employer, then the picketing was considered lawful primary activity, [8/] even if such activity was aimed at secondary employers and the object was to induce neutral employees from working on the primary premises.[9/]

The National Labor Relations Board ultimately recognized that ownership of a situs could not be the critical factor in finding unlawful secondary activity and that protected primary activity also incidentally affected neutrals. As a consequence, the Board developed guidelines for ascertaining whether the existence of the prohibited object and thus the unlawful secondary activity was present at a common situs. These standards were first enumerated in the Moore Dry Dock case [10/] which established the following principles:

1. The picketing must be strictly limited to times when the situs of the dispute is located on the secondary employer's premises.

2. At the time of the picketing, the primary employer must be engaged in its normal business at the site.

3. The picketing must be limited to places reasonably close to the location of the situs.

4. The picketing must clearly disclose that the dispute is with the primary employer.[11]

In those instances, if the union's activities met these standards, there was a presumption of legality unless there was persuasive evidence of an illegal object. The failure to measure up to the standards totally, however, was not considered presumptive of illegality. The application of the test was accepted and approved by the federal courts.[12]

The guidelines set forth in Moore Dry Dock have been applied to common situs construction industry picketing by the Board and the federal courts. Their decisions require that the common situs picketing be confined to times and places where the primary employer is present, and require that the picket signs indicate the identity of the primary employer involved in the dispute.

A court enforced the Board's decision, applying the Moore Dry Dock standards, where the dispute arose between construction trades union and a company performing services for a housing construction project. The employer was also serving as its own general contractor. When the union established its picket line, the employees of the subcontractor refused to cross. In that case, the Board held that the picketing was unlawful because of the failure of the union to denote on its picket signs the identity of the primary

employer and its failure to state that it was that employer with whom its dispute existed.[13] In a similar case, two years later, the union picketed 7 of 11 entrances to a large building which contained about 64 shops. Four of the shops were operated by the owners of the building with whom the union had its dispute. In finding a violation of Section 8(b)(4), the National Labor Relations Board stated that its primary emphasis was "to require that the picketing be so conducted as to minimize its impact on neutral employees insofar as this can be done without substantial impairment of the effectiveness of the picketing in reaching the primary employees."[14]

A fifth rule was added to the Moore Dry Dock standards in Washington Coca-Cola,[15] i.e., if the primary employer had a regular place of business which would be picketed, a union could only picket there. This, said the National Labor Relations Board, was so even if his employees were only at the premises for a short period of time each day. In effect, the union violation of this so-called fifth rule obviated the necessity of applying the other four Moore Dry Dock tests.

Unarguably, the Washington Coca-Cola doctrine swung the pendulum much too far in favor of neutral employers and has subsequently been modified to the extent that the location of the situs of the primary employer is only one factor to be considered when determining the existence of unlawful secondary activity.[16]

As experience developed in the application of the Moore Dry Dock - Washington Coca-Cola standards to the construction situa-

tion, the per se mechanical application of those standards has given way to a more realistic application. Thus, for example, in Local 3 IBEW,[17] the Board ruled that temporary absences from the situs such as the primary employer not scheduling work for that day, success of the union in convincing employees of the primary employer to strike or the employer removing the employees from the situs, were found not to render the picket line at the common situs unlawful.[18]

Obviously, with the demise of the Washington Coca-Cola doctrine, it became simpler for a union to establish lawful picketing on a common situs, especially in the construction industry. The return swing of the pendulum restored to construction trades unions the right to strike at a common situs under substantially less onerous conditions. However, it brought about a new principle in the history of common situs picketing. The "reserved gate doctrine" was the result.

In response to union efforts to influence secondary employers, primary employers constructed separate gates through which only neutral employees were permitted to pass to and from a common situs. The obvious object of that tactic was to insure that any picketing which occurred at those gates would be directed only to those using the gate. The object of the picketing thus became so apparent that subsequent decisions held the picketing to be unlawful.[19]

The Second Circuit Court of Appeals in the Phelps Dodge case,20/ while upholding the decision of the National Labor Relations Board that picketing at the reserved gate was unlawful, also held that such picketing would have been legal had the neutral employees been engaged in the type of work which required the closure of the plant or if the secondary employer had been an ally of the struck employer.

Subsequently in Electrical Workers Union 761 v. NLRB, 366 U.S. 667 (1961), the United States Supreme Court quoted the language from the Second Circuit's Phelps Dodge case in giving its approval to the reserved gate doctrine. The Court stated, however, a principle which is at the heart of your consideration of S. 1479. The Court stated that picketing of the entrance utilized by the employees of neutral independent contractors at the situs of a primary dispute is lawful and permissible unless their work is unrelated to the normal operations of the employer, and if done during normal operations of the plant, would not require stopping those operations.

The so-called "related work doctrine" is then the offspring of the reserved gate doctrine. It is the so-called related work aspect upon which the proponents of S. 1479 seek to justify the language permitting the extension of picket line influence to the uninvolved unoffending employer. There is a "unique relationship between contractors and subcontractors in the construction industry," states the Building and Construction Trades

Department in its Position Paper on Secondary Boycott. Labor suggests that, because the primary contractor is responsible in many instances for designating the subcontractor, and because each of them is engaged in a common project to which they contribute their services, the kind of related work noted by the Court in General Electric is present. This, it argues, should provide a foundation for the same rights to be enjoyed by the construction trades unions as are enjoyed by their counterparts in the industrial sector.

A brief development of that theory will illustrate its rejection by the Board and the courts as it applies to construction trades and common situs situations. In a decision which provided the foundation for the limitations currently imposed on common situs picketing, the United States Supreme Court considered the relationship of a general contractor and subcontractors at a construction site.21/ The case involved one subcontractor who employed nonunion labor and a general contractor whose employees were union members, as apparently were employees of all other subcontractors on the project. After picketing resulted in the termination of the subcontract with the nonunion subcontractor, the unions claimed that their picketing efforts were primary, not secondary activity. They argued, in 1951, substantially as they argue now in support of S. 1479, that all work at a construction site is related and that the subcontractors are under the supervision of the general contractor. All employers on the site,

they say, should be treated as a single employer. The Denver Court rejected that reasoning and stated:

> ". . . the fact that the contractor and subcontractor were engaged on the same construction project and that the contractor had some supervision over the subcontractors work did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other . . ."[22/]

Ten years later, the GE case,[23/] the Supreme Court seemingly gave limited approval to the argument the unions had made in Denver Building Trades. It should be remembered, however, that the General Electric case took place in an industrial context where only one "neutral" employer and several unions were involved versus the normal situation on a construction site where there are many employers and many unions.

The National Labor Relations Board recognized the distinction between these situations. In 1965, in Markwell & Hartz, Inc.[24/] the Board specifically declined to apply the Supreme Court's GE related work doctrine to the construction industry. Markwell & Hartz was a general contractor employing nonunion employees. In a New Orleans building project, it subcontracted certain pile driving and electrical work to subcontractors who employed union employees. In an effort to become exclusive bargaining representative of Markwell & Hartz employees, the Trades Council picketed all four gates of the project despite the fact that one of the four was designated exclusive for the use of the nonunion employees of Markwell & Hartz.

The National Labor Relations Board found the picketing illegal. In finding that the Denver Building Trades decision was expressly approved in the GE case, which followed it by 10 years, the Board stated:

> "(I)t was precisely this claim, that the close working relations of various building construction contractors on a common situs involved them in a common undertaking which destroyed the neutrality and thus the immunity of secondary employers and employees to picket line appeals, that the Supreme Court rejected in Denver Building Trades."25/

Two members of the National Labor Relations Board dissented, arguing that the related work doctrine should apply to the construction industry. They expressed the opinion, as proponents of S. 1479 do today, that the Supreme Court equated subcontractors of general contractors with suppliers and deliverymen of industrial employers, arguing that the pressures felt by each are the same. That dissent called for a distinction between situations in which the primary dispute is with the general contractor and those in which it is with the subcontractor, saying:

> "The work of the employees of the neutral general contractor and subcontractors, though obviously bearing a close relationship to the work of the primary employees, is nevertheless not work which the primary subcontractor has obligated himself to perform or which lies within his power to control or to assign to whomsoever he sees fit."26/

That dissent, in contrast with the predicate for S. 1479, seems to place a greater emphasis on the relationship of the primary contractor to the owner of the project and to his supervision of the subcontractor's work than to a finding that the contractor's and subcontractor's work are related.

The 5th Circuit Court of appeals enforced the Board's order. The Court, in doing so, stated that it need not further examine the issue of whether subcontractors work was related to that of the primary, concluding that "It is answered authoritatively in Denver . . ."[27/] The Court found no conflict between Denver Building Trades and General Electric. The dissenting judge argued that the Supreme Court decision in GE was equally applicable to construction sites as to industrial sites.

It is clear, Members of the Committee, that the United States Supreme Court in General Electric did not overrule the Denver Building Trades rationale. It is equally clear that the National Labor Relations Board in Markwell & Hartz construed the Court's opinion as adopting the Denver Building Trades rationale. With the exception of one judge, the United States Court of Appeals panel in Markwell agreed that the Supreme Court decision in Denver has laid to rest any inquiry into the relationship between contractor and subcontractor in common situs situations.

The same voices of labor which call for "equalization" of the picketing rights of construction and industrial unions blithely ignore the essential difference between those situations. At the construction site, numerous employers clearly uninvolved in the argument that separates the primary disputants would be relegated by the passage of this bill to a future of job interference whenever they have the misfortune to share a construction

site with an employer who has the potential for involving himself in a dispute with a construction trades union.

The voices of labor which argue for "equalization" ignore the fact that Section 8 (f) of the National Labor Relations Act creates an exception for construction trade unions under which they may obligate an employee to union membership within seven days rather than the thirty days allotted to industrial employers.

The Building Trades sponsorship of S. 1479 appears to rely extensively upon Republican and Democratic voices from the past. Unions sought and have found the statement made by Dwight Eisenhower in 1954, which seems to place his blessing upon the right of a labor organization to enmesh neutrals in construction situs labor disputes. I need not tell you that 1954 was a different time. In addition to its not being within the setting for the economic conditions of 1975, the statement preceded the rejection, by the Board and courts, of the attempt to apply the related work doctrine to common situs situations, and the subsequent and reasoned analyses of the National Labor Relations Board and the federal courts approving the Denver Building Trades rationale. If we hearken to voices of the past, should we not listen to the voice of Senator Taft who so clearly and without embellishment said in 1947 that he has not been shown a good secondary boycott.

I heartily encourage you to reject S. 1479 in your Committee deliberations. Thank you.

1/ See, e.g., H.R. 100, 91st Cong., 1st. Sess. (1969) H.R. 10027, 39th Cong., 1st. Sess. (1965); H.R. 6411, 89th Cong., 1st. Sess. (1960); S. 2643, 86th Cong., 2d Sess. (1960); S. 2650, 83rd Cong., 2d Sess. (1954). H.R. REP. No. 741, 86th Cong., 1st Sess. 22 (1959).

2/ Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. Section 104 (1964).

3/ Dereshinsky, "Common-Situs Picketing and the NLRB," 50 Boston U.S. Rev. 499, 505 (1970) (hereinafter "Dereshinsky").

4/ 49 Stat. 449 (1935), as amended 61 Stat. 141 (1947) and 73 Stat. 542 (1959), 29 U.S.C. Section 158 (b) (4) (1964).

5/ 93 Cong. Rec. 4198 (1947) (remarks of Senator Taft).

6/ Electrical Workers Local 501 v. NLRB, 181 F. 2nd 34, 37 (2d Cir. 1950), aff'd. 341 U.S. 694 (1951).

7/ "(T)he common law of labor relations has created no concept more elusive than that of 'secondary' conduct; it has drawn no lines more arbitrary, tenuous and shifting than those separating 'primary' from 'secondary' activities." Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 386 (1969).

8/ Elec. Workers Local 813 (Interborough News Co.), 90 NLRB 2135 (1950); Teamsters Local 87 (Di Giorgio Wine Co.), 87 NLRB 720 (1949), aff'd, 191 F. 2d 642 (D.C. Cir. 1951), cert. denied, 342 U.S. 869 (1951); Oil Workers Local 346 (Pure Oil Co.), 84 NLRB 315, 318 (1949).

9/ Newspapers & Mail Deliverers (Ryan Constr. Corp), 85 NLRB 417, 418 (1949).

10/ Sailors Union of the Pacific (Moore Dry Dock Co.), 92 NLRB 547 (1950).

11/ Id. at 549.

12/ See, e.g., Local 55, Carpenters' Council (Professional and Business Men's Life Ins. Co.), 108 NLRB 363 (1954), enforced, 218 F. 2d 226 (10th Cir. 1954); see also Retail Clerks, Local 1017 (Crystal Palace Market), 116 NLRB 856, 859 (1956), enforced, 249 F. 2d 591 (9th Cir. 1957). (hereinafter "Crystal Palace Market") (" ...(The Moore Dry Dock) principles should apply to all common situs picketing.").

13/ Carpenters Local 55 (Professional & Businessmen's Life Ins. Co.), 108 NLRB 363 (1954), enforced 218 F. 2d 226 (C.A. 10, 1954).

14/ Crystal Market Palace, supra note 12, 116 NLRB at 859.

15/ Brewery Drivers Local 67, 107 NLRB 299 (1953), aff'd, 220 F. 2d 380 (D.C. Cir. 1955).

16/ IBEW, Local 861 (Plauche Elec. Co.), 135 NLRB 250 (1962); see also United Plant Guard Workers of America (Houston Armored Car), 136 NLRB 110 (1962).

17/ Electrical Workers, IBEW (New Power Wire and Electric Company), 144 NLRB 1089 (1963) enforced in part 340 F. 2d 71 (C.A. 2, 1965).

18/ Chemical Workers Local 36 (Virginia-Carolina Chemical Corp.) 126 NLRB 907 (1960); McLeod v. Steel Workers, 176 F. Supp. 813 (E.D.N.Y. 1959). Machinists Local 889 (Freeman Construction Co.), 120 NLRB 753 (1958).

19/ Steel Workers v. NLRB, 289 F. 2d 591 (C.A.2, 1961).

20/ Electric Workers Union, Local 761 v. NLRB, 366 U.S. 667, 672 (1961).

21/ NLRB v. Denver Building and Construction Trades Council, 341 U.S. 675 (1951).

22/ Id. at 689-90.

23/ See note 20, supra.

24/ Building and Construction Trades Council, 155 NLRB 319 (1965).

25/ Id. at 327.

26/ Id. at 335, Footnote 35.

27/ Markwell & Hartz v. NLRB, 387 F. 2d 79, 83 (C.A.5, 1968).

STATEMENT OF THOMAS F. MURPHY, PRESIDENT, BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA IN SUPPORT OF S. 1479

Mr. Chairman and members of the committee, I am delighted to have the opportunity to appear here this afternoon and to testify on behalf of S. 1479, a bill to amend section 8 (b)(4) of the National Labor Relations Act with respect to strikes at the site of construction projects.

It is referred to as the Equal Treatment of Craft and Industrial Workers bill.

My International Union has long been in support of this proposal to restore the economic rights of the building and construction trades unions. I have been repeatedly disappointed because this legislation has never reached the Senate floor for a vote. It has been before the Congress for many years, and it has had bipartisan support from both the Congress and the executive branch. Presidents Truman, Eisenhower, Kennedy, Johnson, as does President Ford, supported it.

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

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

he does have control. He has control over the quality of the work, the time schedule, the quality of material.

Buildings or construction projects are usually the products of the combined efforts of many firms working side by side at the site of construction. While they may not have technical contractual relationship with each other, all these contractors do work together as a team and coordinate operations.

Whatever label might be used to describe the relationships there is still a direct connection between the various contractors.

Because of the relationships on the construction job, it cannot be said that the contractors are neutral or innocent third parties as far as labor and industrial relations are concerned.

A recent report of the Committee for Economic Development stated:

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

workers are denied this freedom because of a technicality in which the law has failed to take into account the nature of the building and construction industry where, instead of one employer with different departments for different kinds of work, there are numerous contractors on the job site doing different kinds of jobs. Electrical contractors, bricklayers, carpenters, et cetera.

If, for instance, the electrician's union pickets the job site because of a dispute with the electrical contractor and the carpenters and bricklayers and other trades do not cross the picket line, it is held that the electrical union is causing a secondary boycott in violation of section 8(b)(4) of the Taft-Hartley Act. Yet it is legal for industrial unions representing employees of a factory to picket the factory site even though employees represented by other unions in the factory refuse to cross the picket line.

Since a union representing employees in a plant, may, in a labor dispute with the plant management, picket the entire plant, and with all its departments, the building trades unions, when engaged in a lawful labor dispute at a construction site, should enjoy the equal right to picket the entire site. This is prevented, however, by the Denver Building Trades case, which treats all contractors as strangers to each other.

S. 1479 would reverse the Denver Building Trades ruling. It would restore to the building trades the right of peaceful picketing on the site of jobs.

Going back, briefly, to the Denver case, I recall that Judge Fahy, former NLRB general counsel, who wrote the unanimous opinion of the U.S. Court of Appeals for the District of Columbia, concluded that picketing at the site of construction was not a true secondary boycott. And I quote Judge Fahy as follows:

> The usual secondary boycott or strike is against one who is not a party to the original dispute. It is designed to cause a neutral to cease doing business with or to bring pressure upon the one with whom labor has a dispute. It seeks to enlist this outside influence to force an employer to make peace with the employees or labor organizations contesting them.

Judge Fahy said the situation in the Denver case was not of this character and pointed out why it was not. In 1961, the Supreme Court reversed the decision of the court of appeals and applied the secondary boycott clause to the labor dispute in the Denver Case.

I believe this decision constituted an unfair restriction of the economic activities of the building and construction unions. A strong dissenting opinion said that the ruling virtually eliminated a trade union's right to strike on a construction job, a right guaranteed to all labor by section 13 of the Taft-Hartley Act.

President Eisenhower, in his 1954 message to Congress, said:

> The true secondary boycott is indefensible and must not be permitted. The Act must not, however, prohibit legitimate concerted activities against others than interested parties. I recommend that the Act be clarified by making it explicit that concerted action against an employer on a construction project, who, together with other employees, is engaged in work on the site of the project, will not be treated as a secondary boycott.

Mr. Chairman and members of the subcommittee, I urgently ask you for approval of S. 1479. I feel the passage of this proposal is necessary to preserve standards in the building and construction industry for the protection of fair employers from the unfair competitive disadvantage of substandard employers and in the interest of justice.

STATEMENT OF THE

CRANE & RIGGING ASSOCIATION

ON

COMMON SITUS PICKETING--S. 1479

TO THE

LABOR SUBCOMMITTEE

OF THE

SENATE COMMITTEE ON LABOR & PUBLIC WELFARE

For further information, contact:

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STATEMENT OF THE

CRANE & RIGGING ASSOCIATION

ON

COMMON SITUS PICKETING--S. 1479

TO THE

LABOR SUBCOMMITTEE

OF THE

SENATE COMMITTEE ON LABOR & PUBLIC WELFARE

The Crane & Rigging Association of the Heavy Specialized Carriers Conference, an affiliate of the American Trucking Associations, is a trade association of companies in the crane, rigging, machinery moving, installation and millwrighting businesses. Our members, who are usually subcontractors, represent an essential element in the construction industry. They can be found on just about every construction project.

The Crane & Rigging Association is composed of professional experts equipped with the versatile machines which have revolutionized construction as well as other industries that have helped create modern America.

Our members play leading roles in the construction of industrial and commercial buildings, powerplants and oil refineries. They transport and place nuclear reactor vessels, bridge beams and other heavy construction materials and equipment. They move spacecraft, missiles

and rockets. Whenever there is something big or heavy to be lifted, moved or placed, you will find our members on the job.

We are deeply concerned about the effects the passage of S. 1479, the Common Situs picketing bill, will have because in reality, it will legalized secondary boycotts in the construction industry. Presently when a construction union has a dispute with a contractor or subcontractor on a construction site, the union may establish a picket line and shut down the work of that contractor until the dispute is settled. This is the way it should be. However, under the provisions of S. 1479, the other contractors or subcontractors who are not involved in the dispute would also be shut down. We believe that this would be grossly unfair.

We are also concerned that S. 1479, as presently written, will allow a union engaged in a dispute with an employer on a job site to to extend its picketing to other job sites where that employer is engaged. We can not believe in any way that this can be considered as peaceful and equitable picketing. In addition, a secondary boycott could shut down an industrial plant where there is construction involved and this would most probably be very loosely interpreted in the interests of organized labor.

The rights of nonunion or open shop contractors should be just as much protected as those who operate closed shop. Without

those rights, the powerful unions will dominate the construction industry and ultimately the American economy.

Our members are bound by either a written or a verbal contract to the general contractor or another subcontractor to perform certain jobs. Subcontractors should not be considered as "joint venturers" on a project. Each is responsible for his own work and employees. The unions themselves realize this in that they negotiate separate contracts with each trade's employers.

Under the proposed legislation, innocent third parties would become involved in disputes which are not of their own making and over which they have absolutely no control. It seems to us that it is most unfair and unjust to penalize these subcontractors because another contractor may have a dispute with another union.

The building trades unions say they only want fair and equitable treatment, but we believe they receive that now. They do have the right to establish picket lines at a construction site where there is a dispute. We feel, however, that they should not have the right to involve others that are engaged in work on the same site but who are not involved in the dispute. Neutral parties should not be prohibited from fulfilling their contracts. To do so would be to deny them a very basic right and freedom.

Construction workers in the key building trades receive an average wage, according to Bureau of Labor statistics, of $10.36 an hour and construction unions consistently run ahead of industrial unions in wage settlements. In 1974, the average increase for construction unions was 9.6 percent whereas it was 6.1 percent for manufacturing unions.

The building trades unions presently enjoy extensive privileges that others do not, including the right to have prehire agreements, exclusive hiring hall agreements and exemptions from the ban on "hot cargo" agreements. They also can enforce restrictive subcontractor agreements.

The construction industry is presently in a very precarious position with high costs of materials, escalating wages running at 10 percent a year and unemployment at 21 percent, with some areas reporting a figure as high as 50 percent. To place additional restrictions on this industry, while at the same time granting tremendous power to the building trades unions, can not in our opinion be considered fair or equitable.

We are convinced that if S. 1479 is enacted into law, not only will the construction industry suffer, but also everyone else. Thousands of projects will be shut down all across the country and the cost of public and private construction will greatly increase

because of work delays and stoppages. Additional energy sources to be provided by refineries and powerplants will be jeopardized by disputes and delays. These costs will have to be passed on to the consumer, but in the process, many small subcontractors will suffer and perhaps even forced out of business.

We urge the Committee to give very serious consideration to our concerns before acting on S. 1479. The backbone of this great country is made up of small businesses and if secondary boycotts in the construction industry are legalized, that backbone could be broken.

For these reasons, we are firmly opposed to the passage of S. 1479 and again respectfully request the Committee to consider our concerns before voting on such important legislation.

EGJ:tb

STATEMENT OF ANDREW T. HAAS, GENERAL PRESIDENT, INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS IN SUPPORT OF S. 1479

I wish to take this opportunity to express the full and complete support of the International Association of Heat and Frost Insulators and Asbestos Workers and its 12,500 members for S. 1479 as introduced by Senators Williams and Javits, and for the efforts of the Building and Construction Trades Department of the AFL-CIO to achieve Congressional passage of the long delayed and much needed bill to remove common situs picketing at construction projects from the proscriptions of Section 8(b)(4) of the National Labor Relations Act as amended.

S. 1479, which, as you know, would simply restore to the Building Trades Unions the same rights enjoyed by other unions in a labor dispute, has the overwhelming support, not only of this union, but also of every branch of organized labor. For this reason, the AFL-CIO Executive Council, on May 6, 1975, issued an official statement declaring:

> It is time the Congress enacted what four Presidents from both political parties have long recognized as just -- the so-called Situs Picketing Bill. Therefore, we call upon the Congress to bring to an early, definitive vote H.R. 5900, introduced by Representative Frank Thompson (D-N.J.), and S.1479, introduced by Senator Harrison Williams (D-N.J.). We pledge our united support of this legislation to

achieve equal treatment for the building and construction trades industry.

In addition, at the recent Building and Construction Trades Department spring Executive Council meeting, the following resolution was unanimously adopted.

WHEREAS, There has been pending, for many years, before the Congress of the United States a Bill "to protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial workers," sometimes known as the Situs Picketing Bill; and

WHEREAS, Congressman Frank Thompson of New Jersey has introduced a Bill in the House of Representatives (H.R. 5900) and Senator Harrison Williams and Senator Jacob Javits have introduced an identical Bill in the Senate (S. 1479) to accomplish the above-quoted objective; and

WHEREAS, The solid merits of this Bill have been recognized on a bipartisan basis by four Presidents of the United States -- Truman, Eisenhower, Kennedy and Johnson; and

WHEREAS, The legislative committees which have conducted hearings on the Bill have studied most carefully every possible aspect of the proposed legislation; and

WHEREAS, commitments were made by outstanding legislators that the Bill should be voted on by the House and the Senate; and

WHEREAS, This Bill is vigorously supported by an undivided labor movement, as evidenced by the actions of the Executive Council and the Conventions; and

WHEREAS, Every legislative trick in the book has been utilized to prevent a fair vote on the Bill in either the House or the Senate.

NOW, THEREFORE, The Executive Council of the Building and Construction Trades Department, AFL-CIO urges that action be taken by the Congress to put this Bill on the lawbooks at this Session of the Congress.

I, therefore, urge your Subcommittee and the full Education and Labor Committee to favorably report S. 1479 promptly after the completion of the hearings you are holding. In addition, I urge you to expend every effort to then bring this bill to the floor of the Senate for action as soon as possible.

STATEMENT OF

CHARLES H. PILLARD, INTERNATIONAL PRESIDENT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO

IN SUPPORT OF

S. 1479

TO AMEND SECTION 8(b) (4) of the

NATIONAL LABOR RELATIONS ACT, AS AMENDED,

WITH RESPECT TO STRIKES AT THE

SITE OF CONSTRUCTION PROJECTS

On behalf of over 1,000,000 members of the International Brotherhood of Electrical Workers, AFL-CIO, I appreciate the opportunity to state our support for S. 1479, which would reverse the ruling in the Denver Building and Construction Trades Council case, 341 U.S. 675, and restore to Building Tradesmen the legal right to picket for lawful purpose--such rights as are presently enjoyed by all other citizens of the United States.

The effects of the Denver Building Trades rule over the past quarter century have been widespread and uniformly adverse to the conditions under which employees in the construction industry must work. The International Office of the IBEW receives reports almost daily from its International Vice Presidents, International Representatives and Local Union Business Managers of the difficulties experienced in attempting to combat the efforts of organizations which are dedicated to the perpetuation of substandard wages and working conditions.

In 1951 the Denver Building Trades case was decided in the Supreme Court. This decision involved a case in which a general contractor subcontracted the electrical work on a construction project to a non-union subcontractor. All other subcontractors employed on the project were union contractors. Thus, the IBEW has a special interest in the passage of S. 1479. Prior to the Supreme Court decision, President Truman in 1949 requested Congress to enact legislation that would negate the NLRB ruling in the Denver case.

President Eisenhower in 1954, 1956, and 1958 also requested and urged passage of legislation to correct this gross inequity. In 1954 President Eisenhower is quoted as follows:

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

In 1956 President Eisenhower said the following:

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

It is also of interest to note that Senator Taft of Ohio, who was the architect of the National Labor Relations Act, was quoted many times as stating that the finding by the NLRB in the Denver case was contrary to his intent as to the right of unions to engage in legal and peaceful picketing.

In 1960, 1961, 1965, 1966, 1967, and almost annually thereafter until the date of this pending legislation there have been legislative bills proposed in both houses of Congress to correct this deprivation of a right guaranteed all citizens of this great country. The Moore Dry Dock standards and rules sought to remedy some of the glaring inequities that came out of the Denver Building Trades case.

But for every one picket line that has been declared legal under the Taft-Hartley Act, under the Denver Building Trades rule, under the Moore Dry Dock standards, 99 such picket lines have been enjoined. Thus, the basic issue presented by the Denver Building Trades case still remains with us.

To cite but a few of the recent unjust examples received from around this nation involving our Local Unions who for the most part were merely expressing by peaceful picket that a contractor or subcontractor was paying wages and/or providing conditions less than those prevailing in the locality we cite the following:

Our Local 903, Gulfport, Mississippi, enjoined and fined $14,000

Local 136, Birmingham, Alabama, twice enjoined

Local 995, Baton Rouge, Louisiana, thrice enjoined

Our Locals in Tampa, Miami, and Fort Lauderdale, Florida - enjoined

Local 25 of Long Island, New York, directly enjoined four times in recent years and once this year as members of the New York City Building and Construction Trades Council.

Local 41 of Buffalo, New York, thrice enjoined

Local 98 of Philadelphia, Pennsylvania

Local 183 of Lexington, Kentucky thrice enjoined

Local 317 of Huntington, West Virginia, enjoined

Local 25 of Washington, D. C. enjoined

Local 107 of Grand Rapids thrice enjoined

Local 64 of Youngstown, Ohio enjoined four times plus fines plus costs

Local 224 of New Bedford, Massachusetts enjoined

Local 99 of Providence, Rhode Island enjoined seven times

Local 223 Brockton, Massachusetts enjoined

Local 437 of Fall River, Massachusetts enjoined

Local 96 of Worcester, Massachusetts enjoined

Local 104 of Boston enjoined

Local 567 of Portland, Maine enjoined and sued for $50,000

Local 37 of Northampton, Massachusetts enjoined

Local 660 of Waterbury, Connecticut case pending

Local 269, Trenton, New Jersey cited ten times

Local 208 of Norwalk, Connecticut enjoined

Local 90 of New Haven, Connecticut twice enjoined

Local 35 of Hartford, Connecticut enjoined five times individually and as members of the Council

Local 768 of Kalispell, Montana enjoined and being sued

These are but a few of recently cited injunctions and for the most part all of them involved lawsuits for damages and court cost.

Many recent reports to this office express the following or similar statements: (May 29, 1975, letter from Local 64, Youngstown, Ohio.)

> "I would also like to make the point that many jobs are not picketed because of the futility and the great expense incurred to defend this action before the N.L.R.B. and the Municipal Courts. It is becoming nearly impossible to protect the interest of our members under present laws."

Expressions such as the one quoted above are typical of the utter frustration and financial expense of a people to express the Constitutional rights of a free people.

In summation, the IBEW urges the passage of S. 1479. The bill, as drafted, permitting the right to engage in picketing by the Building and Construction Industry, contains several limitations of that right which assure that the public interest and the employer interest have been adequately protected. It is my understanding that the safeguards contained in this bill actually exceed those requested by most opponents of the legislation. It is the position of the IBEW that this legislation is needed to correct the gross inequity in the existing law. It is only through such legislation that the wages, working conditions, and rights of construction workers can be adequately protected. These workers would thus be assured of basic rights that are guaranteed to every American citizen. Fair construction contractors would be assured under this legislation that they would not be undercut in their business dealings by contractors seeking to gain an unfair competitive advantage at the expense of the employees. For all of the above reasons, the IBEW urges the enactment of S. 1479.

STATEMENT OF THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES IN SUPPORT OF S. 1479

In the proud tradition of the American Labor Movement to persist in its efforts to secure legislation promoting the welfare of the wage earner, I make this statement in support of S. 1479 on behalf of the 210,000 members of the International Brotherhood of Painters and Allied Trades.

The ill-advised, restrictive, unrealistic laws and regulations which brought the Denver Board ruling by the National Labor Relations Board and the courts have, without question, done extensive damage to the construction industry.

S. 1479 will clarify a technicality in the law and correct an unfair restriction placed on unions in the Building and Construction Industry under Section 8 b (4) of the Taft-Hartley Act and will restore to the building tradesman the right to engage in peaceful picketing on the site of construction jobs; the same right enjoyed by factory employees in a labor dispute.

The fact that this right has been denied to building and construction trades unions is outright discrimination.

Five Presidents of the United States--Truman, Eisenhower, Kennedy, Johnson and Nixon--have urged the Congress to adopt legislation which would recognize the right of labor to engage in situs picketing.

All legislative committee reports, without exception, have favored the enactment of situs picketing legislation.

Congress once again has legislation pending before it which is designed to reverse the decision rendered by the N.L.R.B. in the Denver Building Trades Case of April 1949.

For a period of over 60 years prior to this decision, the Building Trades Unions enjoyed the same rights as all other unions. The erroneous interpretation of Section 8 b (4) of the Taft-Hartley Act by the N.L.R.B. was based on a technicality in the law which did not take into account the unique relationship between contractors and subcontractors in the construction industry. A relationship which was recognized by Senator Taft in legislative history of the legislation but was "interpreted out" by the N.L.R.B. ruling.

The uniqueness of this relationship was recognized by the Secretaries of Labor of both political parties--Durkin, Mitchell, Goldberg, Wirtz, Hodgson, Schultz and Brennan--all of whom worked actively to secure the enactment of this much-needed legislation.

The construction industry has been and is today preoccupied with this issue and this, unfortunately, has directed attention

from other important and pressing problems. We wish to get on with this work. And to that end, we stand ready to add our efforts and resources to bring about a considered solution of this matter.

S. FRANK RAFTERY
General President

STATEMENT OF HUNTER P. WHARTON, GENERAL PRESIDENT
INTERNATIONAL UNION OF OPERATING ENGINEERS

Mr. Chairman, I want to thank you for giving me this opportunity to submit my views on the current proposals to amend section 8(b)(4) of the National Labor Relations Act, as amended.

S. 1479, which would change the existing law with regard to on-site picketing to allow for the unique situation of the building industry. I feel that there is a great need for this measure, and I strongly urge that this committee give this bill a favorable consideration.

In the Denver Building Trades case decided by the Supreme Court in 1951, it was held to be illegal for a union to picket at a job site protesting substandard conditions maintained by one construction contractor, where this results in work stoppage by employees of other contractors at the same job site.

The purpose of the law against secondary boycotts is to keep neutrals and innocent bystanders from becoming the victims of labor-management disputes. This a good law and has worked well but it was never intended to provide a cloak of immunity for participants in such disputes. The construction industry is unique. The unique situation operates as follows: The general contractor has the job of organizing the efforts of the separate contractors and their workers to harmonize the work on a

given building project, and to achieve full efficiency. Yet, each contractor is legally a separate employer, employing his own labor. Thus, under the decision in the Denver case these contractors, legally distinct, but in reality working closely together with the general contractor, have been considered "neutral" with regard to each other. This legal neutrality is a myth and hardly reflects the real-life relationship in a building project. The various subcontractors under one general contractor are well aware of the situation they are entering when they agree to work on the site of construction. As Secretary of Labor Wirtz has said before this committee concerning subcontractors entering into agreement with another subcontractor who employes non-union labor:

> No one can be taken by surprise in these situations. No one can claim damage without advance warning. No one is neutral. No one is an innocent bystander. Everyone is well aware of the probable consequences of his own course of action.

In a factory situation, when a dispute arises regarding a certain group of employees, a peaceful picket line could be formed to influence other unions in their relationship to the plant. But this is not the case in the construction industry. A general contractor may hire a non union subcontractor with non union employees to work there, but

union workers at the construction site are not allowed to picket. Such picketing, which induces refusals to cross picket lines at construction sites, does not constitute a true secondary boycott. The nature of the relationship among employers engaged at such sites is such that no one of them can truly be said to be an innocent third party. They are, in such a situation, more like units in an industrial plant, rather than separate business entities.

S. 1479 would add a proviso to the existing law to exempt strikes at a construction site against those who are in the relationship of contractors and subcontractors from the application of section 8(b)(4)(B). Adoption of this proviso would constitute a recognition of the realities of the relationships at construction sites. It would remove an inequity against building trades unions which has existed since the Supreme Court Decision in 1951.

I hasten to point out that since the bill is in the form of a proviso, it would not disturb existing law respecting true secondary boycotts in the construction industry. For example, if a union working on a construction site peacefully pickets on the particular site to protest the substandard conditions maintained by one construction contractor of the same building project, this would be legal if S. 1479 becomes law. If, however, this union undertakes to picket a contractor at some other location, this is still a true secondary boycott, and would be a violation of the law.

My union has long supported this measure and feels very strongly that there should be no delay in the passage

of this bill. This distinguished committee has done an excellent job of examining this issue and the answer to the problem has been clearly set out. I urge the full committee to pass favorable judgment on this bill, so that Members of Congress in the House and Senate will finally be given the opportunity to record their full support of this laudable and long-overdue legislation.

NATIONAL ASSOCIATION OF HOME BUILDERS

National Housing Center

15TH AND M STREETS, N.W., WASHINGTON, D.C. 20005

TELEX 89-2600 TELEPHONE (202) 452-0200

J. S. "MICKEY" NORMAN, JR.
PRESIDENT

July 22, 1975

The Honorable Harrison A. Williams
Chairman
Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I should like to request that this letter statement be included in the record of the hearings of the Subcommittee on S. 1479. This statement is being made on behalf of the National Association of Home Builders which represents the nation's home building industry. Our Association consists of approximately 74,000 member firms in 603 affiliated state and local associations throughout the nation.

Our membership consists of both union and nonunion builders and of both prime contractors and subcontractors. They are principally small firms, the average member building less than 25 housing units a year.

As we have on numerous occasions in the past, we should like to express our opposition to the passage of legislation, such as that embraced in S. 1479, to amend the National Labor Relations Act to permit picketing of a whole construction site where the issue involved in the strike is only between one employer at the site and his employees. The so-called secondary boycott aspects of such picketing, with its harmful effects on the employers and employees not engaged in the labor dispute concerning which the picketing is carried out, would be harmful to the home building industry, especially in this time of record lows in housing construction and severe economic distress being suffered by both employers and employees in the home building industry.

Housing construction today is at its slowest pace since right after the World War II. We estimate that total housing starts during 1975 will not exceed 1.1 million units, unless legislation to stimulate construction of housing becomes law soon. While unemployment in construction generally was at a record high of 21.8% in May, we estimate that unemployment in our industry is about 42%.

S. 1479 carries with it the potential of a significant increase in work stoppages in the construction industry, if the construction unions attempt to use this new power, if enacted, to achieve greater gains for their members as well as an expansion of their membership. Such an occurrence could have a severe impact on our industry, as it hopefully begins this coming fall and winter to slowly work its way out of the deepest depression it has experienced since the 30's. We are deeply concerned that job sites will be shut down by labor disputes over which the individual home builder has no control and with respect to which he is not a party.

We have no dispute with the right of a labor union to picket an employer as part of its effort to achieve agreement to terms of employment which it believes that its members employed by that employer are entitled. Nor do we object to picketing of such an employer for the purpose of achieving recognition to the extent that such picketing is otherwise permissable under the National Labor Relations Act. However, where the issue involved in the picketing does not directly concern the home builder, the impact on him nevertheless could be quite severe, if his whole job site is allowed to be shut down as a result of the situs picketing that would be allowed under the provisions of S. 1479.

The typical home builder makes his sales from on-site model homes. He signs a contract with the home buyer prior to the actual start of the construction of the home at a firm price and completion date. If his ability to deliver that house at the price and time he has contracted for and still make a reasonable profit is jeopardized as a result of his construction site being shut down over a dispute in which he is not involved, he will either have to go out of business or increase the price of subsequently sold homes in order to make up for the losses incurred. While there are always risks that one of his subcontractors will be delayed on his aspect of the house's construction because of a labor dispute, the risks would be greatly magnified if such a labor dispute is allowed to prevent all other employers from proceeding with their aspects of the construction.

We firmly believe that present law, which, in effect, limits a dispute in the construction industry to the particular employer and his employees who are primarily involved, should be retained. We do not believe that S. 1479 should be allowed to create a fiction that the various employers involved in construction at a job site are, in fact, involved in a joint venture or identity of interest in such a fashion as to make them one employer.

We are also concerned that the broad language of S. 1479 could be interpreted to authorize strike activity for the purpose of conducting product boycotts with respect to new materials or technologies or improved construction techniques deemed objectionable by the employees of one union working at a construction site. There has been a tremendous increase in the use of new materials and techniques in the construction industry over the past several years. The resultant increase in productivity has helped hold down the labor component of the cost of a new house, while other components, such as land and financing, have increased significantly.

These potential problems only highlight the fact that in recent years labor-management relationships in the construction industry have gone through a period of stability which has been of benefit to both labor and management. This period of stability coincided with the existence of the Construction Industry Stabilization Committee, which was formed as a reaction to disproportionate increases in wage rates obtained by construction labor in the period from 1969 to 1971.

As the result of CISC, wage increases in the construction industry were significantly moderated. Additionally, there obtained an era of relative calm with respect to the relations between labor and management during CISC's three year tenure. While some of the volatility of this relationship has returned since CISC's untimely demise, we have been encouraged by the recent institution by the President of the Committee on Collective Bargaining in Construction. We are hopeful that the forum it provides for the representatives of national construction employer organizations and construction unions will bring back again much of the stability that CISC provided.

Passage of S. 1479, especially in its present form, could seriously jeopardize this possibility. It could engender a wider range of labor-management disputes as both attempt to work out the parameters of its

application. At a time when construction, especially home building, is at such a low ebb, this could have serious consequences to the economy and to a resumption of the type of responsible discussion between the national leaders of both labor and management in the construction industry that hopefully will flow from the Committee on Collective Bargaining in Construction.

There is a national interest in stability in the construction industry that has been recognized by the national leaders of both the construction employer and construction employee organizations. This could be jeopardized if S. 1479 is enacted. We, therefore, urge that it not be enacted.

Sincerely,

J. S. "Mickey" Norman, Jr.
President

STATEMENT OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.
BEFORE THE
SENATE LABOR SUBCOMMITTEE
IN REGARD TO
S. 1479, COMMON SITUS PICKETING LEGISLATION

Mr. Chairman, Members of the Subcommittee:

The National Electrical Contractors Association is the nationally recognized spokesman for the electrical construction industry. This industry is comprised of more than 28,000 contractors employing more than 500,000 electrical workers.

The vast majority of our Association's members are firms which employ organized labor. NECA members employ organized labor by choice. We have a long, proud history of labor-management cooperation in our portion of the construction industry. Our joint Council on Industrial Relations for the Electrical Industry has been a model for cooperative solutions to collective bargaining disagreements for more than 55 years.

We believe the joint apprenticeship and training program in our industry is second to none. Because of the outstanding education provided by this program, as well as Journeymen Training Programs, our electrical journeymen are highly skilled craftsmen, and the quality of work in the electrical construction field is the best there is. As a result, we know that building owners using specialized electrical contractors who employ union electrical workers are getting the most value for their construction dollar.

Our contractors support organized labor in most of its goals because, for the most part, we are working toward the same end...that is, a strong productive industry. In the instance of the legislation under consideration here, however, we must disagree with our friends in organized labor.

We have given long and careful consideration to the concepts embodied in S. 1479. It is our conclusion that at one time, nearly a decade ago, the measure might have accomplished the goals for which it was intended. It might have given organized labor in construction a strong organizing tool. Today, while we are sympathetic with the objective of a strong and organized electrical construction industry, we feel that the bill in question would not accomplish that purpose and that the time has passed when this measure would achieve its aim.

If passed today, S. 1479 could create conditions directly the reverse of those intended. Public attitude toward organized labor, especially in construction, has changed in ten years. Today the general public is becoming increasingly intolerant of strikes, disputes and disruption. Both management and labor in the organized construction industry have been sharply criticized, often unjustly, for high wages and prices and declining productivity. In the electrical sector of the industry, we have successfully combatted such charges through performance of quality work at competitive prices. But a public attitude of skepticism remains pervasive. Strikes, job site shut-downs and disputes, proliferated because of the provisions of S. 1479, would add to the criticism and detract from the image and public confidence in the construction industry as a whole.

We are still experiencing a recession in the construction industry of serious proportions. To erode public confidence in the industry even further would hold no benefit for union or contractor. Strikes and disputes that increase in number and effect as a result of S. 1479 would bring about that dangerous erosion.

As we see it, in the organized electrical construction industry, both the electrical worker and the electrical contractor would suffer from enactment of the situs picketing bill under today's economic conditions and with today's public attitude. Threats of economic or organizational picketing on a job can cause a potential owner to have second thoughts about his planned construction job. If time is of the essence, the job may be forfeited entirely. If disputes seem probable, the owner may not want to risk the money which delay would cost him and decide to forego the project altogether or at least defer it until prospects for timely completion appear more favorable. While such a situation would be harmful to the industry at any time, it would be particularly injurious now, in our present economic condition, when we are trying to help the economy recover.

The contractor is also put into a dangerously fluid situation. With S. 1479 as law, he would not only have to worry about and consider in his bid price the state of his own labor relations situation, but that of every other contractor and subcontractor on the job site as well. This is an impossibility, since a subcontractor will usually not know until contracts are awarded who the other prime and subcontractors on a job will be. As a result, he is bidding in the dark. Construction prices must reflect the possible contingencies, and even those contingency additions to construction pricing will not protect the contractor if a job is shut down or a dispute lasts very long, since he must also have kept the bid competitive.

If owners postpone projects or if contractors are caught in a critical cash flow crunch because of job delays, no one benefits. Obviously, a situation in which there are fewer jobs hurts everyone.

At this time we feel the possible benefits of the situs picketing bill are far outweighted by the potential harm it will do to the organized construction industry. With that in mind, we respectfully request this Labor Subcommittee to cease its consideration of S. 1479.

Thank you for allowing us to present our views.

TESTIMONY OF S. RAYBURN WATKINS,
PRESIDENT, NATIONAL LABOR-MANAGEMENT FOUNDATION
FOR THE SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR & PUBLIC WELFARE

The National Labor-Management Foundation represents members in 50 states and maintains offices in Washington, D. C. and Louisville, Ky. Chartered in 1947, the Foundation is a non-profit, non-partisan organization providing research, education and information necessary to the development of a clearer understanding and better communications between employers, employees, government and the general public, relative to labor-management concerns.

The Foundation analyzes and supports legislation believed to engender improved labor-management relations and better working conditions. Conversely, it opposes legislation believed to have the opposite effect. S. 1479 falls in this latter category.

If one industry were to be singled out as an example of the extent and misuse of union power, the construction industry would have to be selected. The problem of spiraling labor costs in that multi-billion dollar industry has continued for so long and reached such grave proportions that even union officials have joined in condeming the situation.

Nat Goldfinger, Research Director of the AFL-CIO, described the wage movements in the building trades in recent years as "wild and weird."

Martin Ward, President of the Plumbing and Pipe Fitters Union, AFL-CIO, declared "We may have killed the goose that laid the golden egg."

At the convention of the International Union of Operating Engineers, AFL-CIO, in April, 1972, Hunter Wharton, President, candidly told 1000 union delegates, "It's time to turn ourselves around and approach our problems as they actually exist.. We are the makers of many of our problems." Mr. Wharton suggested that "had productivity increased as wages began to rise, we wouldn't now be faced with some of our present-day problems." Wharton also said, "Labor must rededicate itself to a pride of work-

manship --- a fair day's work for a fair day's pay."

Aggravated by increasing violence arising from the success of the growing number of non-union contractors, labor problems in the construction industry present serious threats to our national economy and industry in general. The Reader's Digest has been a leader in bringing the problems of violence in the construction field to public attention. Yet, Congress continues to ignore the menace of labor violence and refuses to take action to correct it.

What the NLMF recommends is not S1479 -- a bill supposedly to restore to unions in the building and construction industry their pre-Taft-Hartley position...To "peacefully publicize" by picketing the fact that an employer contracts part of the job to a "non-union" subcontractor- but rather a serious investigation into what has happened to the construction industry. Why can't millions of American families buy a home? Why are construction costs so high? In this day when unemployment is over 9% this committee should be considering how to create more jobs..not fewer. What this committee should be doing is not overloading the record with testimony from union officials but rather inviting open shop construction workers into these hearings to learn from them how they feel about union goons use of clubs, arson, hammers, bombs and political influence to prevent non-union construction.

It is the opinion of the NLMF that the objective of proponents of S-1479 is to destroy once and for all the principle of open shop, whereby anyone can get a job in a free market place and to prevent unions from having to compete with non-union labor.

When is Congress going to become concerned about the taxpayers who are the ultimate victims of the S-1479 type of legislation? It's the taxpayers money which is used to protect private property from union violence and to carry on investigations of such violence which seldom result in bringing the guilty to justice. It's the taxpayers whose pocketbooks are shrunk by higher costs when unions have a lock on construction jobs.

It is our opinion that the problems the subcommittee is concerned about would

not exist if union officials were prohibited from using compulsory dues money for political purposes.

More and more contractors are turning to open shop to compete for building contracts. More and more construction workers, including minority workers, who for years had a difficult time getting into union apprentice training programs, are happy to work for open shop contractors.

The construction worker who wants to support his family without union harrassment should have an opportunity to work with an open shop contractor. The heads of American households should have the choice of buying homes without union harassment. American businessmen should have the choice of buying construction sites and building without paying ransom to union officials. Construction workers should have the right to work without fear of job-site violence.

Unions are afraid of the open shop. Unions are afraid that it will nullify their inflationary wages and fringe benefits which put most of the construction workers out of business. Secondary Boycott legislation has been rejected before. If Congress is serious about solving the problem of the construction industry it will reject Secondary Boycott legislation again. It will reject S-1479. This Committee can best use its time in making the construction industry a viable industry again. It can do this by preserving the free market and not by forcing construction workers to join unions against their will or by forcing companies to accept union agreements against their will.

# # # # #

NATIONAL LUMBER AND BUILDING NLBMDA MATERIAL DEALERS ASSOCIATION

STATEMENT OF
NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION
ON
S. 1479
BEFORE THE SENATE LABOR AND PUBLIC WELFARE COMMITTEE
LABOR SUBCOMMITTEE

July 8, 1975

My name is Robert S. Horton. This year, I am the President of the National Lumber and Building Material Dealers Association. I am also the President of the Standard Lumber Company of Winona, Minnesota.

The National Lumber and Building Material Dealers Association consists of 30 federated state and regional retail lumber and building material dealers associations with an aggregate of some 15,000 companies throughout the United States. Our members supply building materials for the majority of the housing built in the United States, as well as a considerable amount of commercial and industrial construction. We also sell building materials to consumers. The great majority of our members would be classified as small businessmen by any definition.

Approximately one-third of our members are directly involved in residential home building and remodeling. One out of 5 is engaged in the manufacture of building components; many provide financing, develop land for building and some are very active in commercial contracting.

1990 M Street, N.W., Suite 350 • Washington, D. C. 20036 • (202) 872-8860

For these reasons the proposal in S. 1479 to amend the present law to permit secondary boycotts is a matter of grave concern to our membership. We are unalterably opposed to such legislation.

The committee is fully familiar with how secondary boycott pressures are exerted. The arguments pro and con have been made for years.

Nonetheless, we must reiterate, there is a patent unfairness in permitting a union alleging a dispute with subcontractor-employer A being allowed to coerce subcontrator-employer B and his employees (who, while working on the same construction site, has no connection, legal or otherwise, with employer A) to cease to work on that construction job site. The purpose of such coercion would be to force employer A and his employees to agree to union demands; failure to do so could cause the general contractor either to dismiss employer A or refuse to do business with him in the future.

The notion that subcontractors or material suppliers providing material and/or installation services typically are embarked on a "common venture" or "joint venture" with a building firm or prime contractor is sheer nonsense. The typical and traditional sub-contractor and materials supply practices and contractural relationships are clearly arm's length relationships and have no

resemblance to a partnership or joint venture or common venture.

Proponents of this bill urge its passage on the grounds of "equality". They seek to draw a parallel between the situation on a construction site and the situation at an industrial facility such as a factory. These are totally dissimilar.

In the one case, the general contractor or builder contracts with a series (as many as 10, 15 or 20) of contractors or subcontractors for the performance of specific parts of the construction process--i.e., for labor or for labor and materials, etc. Independent subcontractors and the employees of such subcontractors are, by no stretch of the imagination, legally or otherwise, employees of the general or prime contractor nor are they employees of any other subcontractor than the one who hired them. For example, the plumbers do not work for the electrical contractor; nor do they work for the general contractor; they work for the plumbing contractor. Their plumbing contractor employer performs work for the general contractor on an arm's length contract.

On the other hand, in a typical plant or factory, the mechanics work for the ownership of the plant. So do the electricians and other employees. In the construction case there is a <u>diversity of</u> employers and in the plant or factory case there is only <u>one employer</u>.

Permitting the building trade unions an exemption from the ban against secondary boycotts would:

(a) escalate minor disputes into major disturbances of production.

(b) distort the long-established construction industry collective bargaining system.

(c) increase the cost of construction materially.

(d) cause substantial losses of employment by typing up large numbers of employees with no direct interest or concern in disputes.

(e) add appreciably to the power exercised by the construction trade unions, a power already so significant as to have boosted their wage and fringe benefits to record highs in spite of the current high rate of unemployment among construction workers.

If this legislation passes, it will virtually assure the eventual unionization of all employees working on construction projects. Unquestionably, this is the chief objective of the unions who are urging passage of this bill.

If an employee desired to work on a construction project, he would not have a choice whether to join a union or not. The boycott compulsion weapon in the hands of the construction trade unions would soon assure this. Thus, the secondary boycott power conferred by S. 1479 would deliver control of the construction labor market to union officials.

We cannot believe that the American people, if they understood the effect of this legislation, would want their elected representatives, in effect, to impose such a pattern by legislative fiat. Passage of S. 1479 would be such a decision.

We urge the committee's rejection of S. 1479.

STATEMENT BY KENNETH E. TOBIN, PRESIDENT OF
THE NATIONAL SAND AND GRAVEL ASSOCIATION AND THE
NATIONAL READY MIXED CONCRETE ASSOCIATION

IN OPPOSITION TO S.1479 AND SIMILAR BILLS

SUBMITTED TO THE SUBCOMMITTEE ON LABOR
OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

My name is Kenneth E. Tobin. I am the President of the National Sand and Gravel Association and the President of the National Ready Mixed Concrete Association. The members of NSGA and NRMCA are strongly opposed to the enactment of S.1479 and similar proposals.

The two Associations have approximately 1200 member companies throughout the United States and its territories. These companies account for a substantial majority of the total annual production of ready mixed concrete and sand and gravel in the United States. The Associations are the recognized spokesmen for their respective industries which provide basic materials for the construction program of our country.

Let me make it clear that the companies which are members of the Associations are not construction industry employers. Our members are primarily engaged as materialmen furnishing ready mixed concrete and/or sand and gravel for use by the construction or building contractor. Nonetheless, our industries are unnecessarily exposed to serious economic injury by picketing which shuts down construction and building jobs to which we furnish our products. We sincerely believe that the enactment of legislation such as you are considering will lead to a large number of shutdowns and be injurious to our member companies and seriously detrimental to the public interest of the United States.

Members of this Committee are well aware of the current economic plight of the construction industry. The decline in construction activity has resulted in a proportional decline in production and use of both sand and gravel and ready mixed concrete. Congress is trying to stimulate employment and return the economy to normal conditions. It seems at cross-purposes with these laudable objectives that you are considering legalizing secondary boycotts at construction sites which will increase unemployment, increase costs to the consumer, and initiate a new inflation spiral in a basic industry which has for some time been the most seriously troubled segment of the national economy.

The evils of secondary boycotts are well known. The prohibition against them in Section 8(b)(4)(B) of the Labor Management Relations Act reflects the will of the American people that unions should not have the power to involve neutral employers and their employees in labor disputes. The net result is to make the public an unwilling and unnecessary victim. Proponents of the legislation attempt to justify its need by equating the situation with a manufacturing plant.

The two situations are not analogous, and the present law properly recognizes the realities which distinguish them. At the industrial establishment, each of the employees work under a set of policies, wage rates, grievance procedures and the like established by that single employer. At the construction project, on the other hand, there are many employers. At the construction project the picketing which would be permitted by S.1479 is picketing which will affect, and which will be intended to affect, employers and employees with whom the pickets have no direct relationship. At the industrial plant, on the contrary, the picketing is intended to affect the employer of the pickets.

The multiplicity of employers in construction work, moreover, is not a device by which to thwart the legitimate activities of the building trades union. The multiplicity is rather a reflection of the multiplicity of the building trades unions themselves, and the insistence of each of them on the maintenance of its own jurisdiction.

That each of the employers may have the responsibility for a portion of a construction project, and may have a contractual relationship to a prime contractor which spells out that responsibility, does not make them less neutral. Secondary boycotts are just as much lacking in justification when the work being done by neutral employers is physically close to the primary employer as when it is being done at some distant location. Moreover, at some "construction sites" -- particularly at major public works installations -- there are often several quite independent projects under way at the same time, with several prime contractors, yet S.1479 would permit these prime contractors and their employees to be made the victims of secondary boycotts simply because of the happenstance that each of them was working at a military base or an atomic energy installation.

Other dangers of the bill are not recognized at all. One is the imprecise nature of the phrase "at the site of the ... work." In the application of the Davis-Bacon Act, in which the same phrase appears, the Solicitor of the Department of Labor has ruled that the concept of "site" includes everything within the outside boundaries of an installation even when the actual construction was on only a small portion of it. Such interpretation could force the cessation of all work at an energy production facility, a military installation or even a public recreational area. The Solicitor's ruling includes in the definition of "site" operations far removed from the location of the construction project - such as a sand

and gravel pit 25 miles from the actual construction project or a ready mixed concrete plant 15 miles from the construction project. The application of rules such as these to define the word "site" in the exemption granted by S.1479 would legalize secondary boycotts which have no relation whatever to the arguments advanced by proponents of the bill.

There is no protection in the bill against inter-union disputes. There have been numerous instances in the past where the building trades unions have regarded other unions as, in effect, not unions at all when they impinge or appear to impinge on work which the building trades unions assert to be their exclusive province. This kind of jurisdictional dispute is the most intractable, the least amenable to mediation, and the most protracted. The bill imposes no restraints on a union which seeks to stop all work on a project in order to assert its claim of entitlement to certain kinds of work.

There is no protection in the bill against product boycotts. The language of the bill permits strikes or refusals to perform services at the site of the construction "directed at" any employer with whom the union has a "labor dispute" relating to "working conditions." The history of product boycotts makes it reasonably apparent that one of the "working conditions" which a building trades union might well find objectionable would be the use or installation by its members of so-called "unfair" products of an employer whose employees had elected not to have a union as their bargaining agent or whose employees had elected to belong to the "wrong" union; "wrong" that is, in the sense that these employees did not select one of the building trades unions as their representatives in bargaining with management.

In conclusion, I should like to point out that the "inequity" which is alleged to justify S.1479 is wholly illusory. The building trades unions

may now, under Section 8(f) of the Act which was added by the Landrum-Griffin Amendments of 1959, make pre-hire agreements which eliminate the real or imagined weaknesses in the election procedures applicable to those unions. Moreover, the Landrum-Griffin Amendments, by the proviso to Section 8(e), except from the prohibition against "hot cargo" clauses agreements in the construction industry "relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting or repair of a building, structure, or other work." Thus the building trades union, unlike other unions, can make agreements with a general contractor in the construction industry by which he agrees to use only those subcontractors who have union contracts. With these advantages which Congress has already accorded, the building trades unions are now in fact specially favored, rather than specially disadvantaged.

The members of the National Ready Mixed Concrete Association and the National Sand and Gravel Association urge as emphatically as possible that you not approve this proposed legislation. The building trades unions already have, and frequently use, power which is incompatible with the public interest and which inflicts injuries and serious harm on employers and employees who are not involved in disputes at construction sites. It is noteworthy at this point that quite frequently, and indeed quite generally, it is jurisdictional disputes between building trades unions which lead to stoppages of construction for energy production purposes, for public works, for private investment in needed facilities, and projects of great national urgency.

The Associations appreciate the opportunity to comment on S.1479 and similar legislation being considered by the Committee.

STATEMENT

of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

to the

SUBCOMMITTEE ON LABOR

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

on

S.1479

(Common Situs Boycotting)

July 15, 1975

The National Society of Professional Engineers, a voluntary, non-profit organization of approximately 70,000 individual members, is appreciative of the opportunity to present its views in opposition to S.1479, a bill which would amend the National Labor Relations Act in such a manner as to produce a seriously adverse effect upon the performance of services by engineering and surveying firms for clients in the construction industry.

S.1479 would amend Section 8 (b) (4) of the National Labor Relations Act so as to legalize "common situs picketing", a practice which is presently prohibited by law as a secondary boycott. The desire of those wishing for authority to engage in this otherwise unlawful activity arises out of a relatively uncomplicated factual situation.

Simply stated, a construction union engaged in a dispute with a single employer or subcontractor at a particular construction site could, if S.1479

becomes the law, picket the entire project in order to bring all activity to a complete halt as a means of forcing that single employer or subcontractor to accede to the union's demands. The net effect would be to legalize the historically unlawful tactic by which a union could pressure and coerce nonunion employees into the union as the price of not having the whole project shutdown by a strike or by the presence of picket lines.

S.1479 would thus give the unions a death grip on the total construction project at a particular location despite the existence of a dispute with only one of the employers or subcontractors. In addition, it could open the door for similar action concerning the manufacturers of products which may be used in the construction project.

In expressing our concern, we wish to emphasize that we do not quarrel with any union's legitimate dispute with a construction contractor or subcontractor insofar as wages or working conditions are concerned. Nor do we take a position on the relative merit of the pending legislation as it could be applied to such a dispute in the construction industry. Our concern, based upon extensive experience by engineering and surveying firms, is that S.1479 - type legislation would encourage building trade unions to use coercive tactics and pressures to attempt to unionize engineering and surveying employees who, if given a free choice, would not wish to be so unionized.

Engineering and surveying firms and their employees occupy a rather unique status vis-a-vis construction projects. Engineering and surveying are highly specialized services performed for a client, be it the general contractor, a subcontractor, the land developer, or the project owner. The engineer or surveyor has an inherent obligation to perform an unbiased service for his client and therefore to use his highest degree of skill and ability. He is not, by virtue of his relationship to his client, necessarily a partner or joint venturer with others engaged on the project. The standard form of

agreement between owner and engineer for professional services, for example, requires the engineer to furnish general observation of the work of the contractor, assist in a correct interpretation of the plans and specifications, and safeguard the owner against defects and deficiencies on the part of the contractor. Under such circumstances, the engineer is hardly a partner or joint venturer of the construction contractor. Rather, he is engaged solely to perform a service, much the same as a lawyer might be retained by the same client to draw up a contract or other legal document. The only difference between the engineer or the surveyor and the lawyer is that the former will usually spend a portion of his time at the construction site.

Because of this unique position and the highly specialized nature of their services, engineers and surveyors have no community of interest or identification with the mechanics or laborers at the construction site who might traditionally belong to a building trades or construction union. This fact, moreover, is generally recognized throughout the construction industry.

In view of this widely recognized difference of position and interests as between professional and technical engineering and surveying employees on the one hand, and mechanics and laborers on the other, it is not surprising that engineering and surveying employees seldom choose to be represented by a union. And in those relatively few cases where they do, they almost invariably prefer a union composed exclusively of similar categories of employees.

Thus, when a union seeks to organize engineers and surveyors, it is usually met with considerable resistance. As a result, in order to organize engineering and surveying employees, the union must resort to both direct and indirect coercion and pressure against the contractor by whom the engineering or surveying firm is retained. Unfortunately, in the absence of some protection in the law, many contractors cannot resist such pressure and are unwilling to

risk shutdown of the entire job. The net result is that the contractor is in turn forced to bring pressure against the engineering and surveying firm. In the alternative, he may be altogether reluctant to engage the services of an engineering or surveying firm whose employees are not represented by a building trades or construction union. In such cases, the engineering and surveying firm is defenseless. And employees of the firm are, in effect, denied their right to join or not join a union as they themselves see fit.

The National Society of Professional Engineers believes that the S.1479-type legislation would strip from engineering and surveying firms much of the protection they now have against such coercion, and that the rights of engineering and surveying employees in the construction field would be placed in serious jeopardy or destroyed entirely by legally permitting the building trades unions to shutdown an entire project or engage in other pressure tactics in an effort to organize these employees.

The main question which therefore concerns us is whether employees of engineering and surveying firms working at the sites of construction projects are to be deprived of the present protection of the law which clearly stipulates that employees have the equal right to join or refrain from joining a union. S.1479 raises this issue in stark reality. The employees with whom we are concerned have the undoubted right to decide by majority vote under the procedures of the National Labor Relations Board whether they wish to be represented by a union, or not. S.1479 would take away from the employees this free choice and give them only the right to join the union or pay the price of their employer and others, not parties to any dispute, from being permitted to operate at the site of construction.

This bill has been repeatedly suggested to previous Congresses which, in their wisdom, did not pass it. The National Society of Professional Engineers strongly opposes its passage now.

STATEMENT OF JOSEPH T. POWER, GENERAL PRESIDENT, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION

I am very grateful for this opportunity to express my views in support of S. 1479, introduced by Senators Williams and Javits, on which your subcommittee is now holding hearings.

This bill has the common purpose of correcting a long standing inequity of the Taft-Hartley Act, contained in Section 8(b)(4) of the National Labor Relations Act, as amended. Among other things, this section prohibits building tradesmen from respecting a picket established at a construction job site advising them that non union workers are being employed by others on the same job. The specific purpose is to repeal this prohibition, thereby overruling an unfortunate decision of the National Labor Rleations Board, affirmed by the Supreme Court of the United States in what is known as the case of Denver Building and Construction Trades Council (341 U. S. 675 (1951)). First, I would like to explain some of the background and the realities of the construction industry.

Buildings or projects are rarely designed and built by one firm or company. Instead they are usually the products of the combined efforts of many firms or builders who may or may not have a direct contractual relationship with each other. Each one of these building firms undertakes a special part of the construction.

For example, there may be one contractor for excavation and for concrete work, or a general contractor for erecting the basic foundation and frame of the construction. Brick, tile, siding, or masonry may be separately contracted or subcontracted. All electrical work is usually separately contracted or subcontracted. So is all plumbing, heating, and air conditioning. Sprinkler systems are installed by another group of contractors. Frequently lathing, plastering,roofing, painting, sheet metal work and other similar functions, contributing to the completed project, may be performed by separate contractors.

All of these contractors must work together as a team. Careful coordination is essential to success. Either the owner or architect-engineer or the general contractor must weld these contractors and their workers together into one unified group. These circumstances create a close relationship between contractors. Indeed, it is advisable for each contractor to know as much as possible about the other contractors who may be chosen to perform some other phase of the work on the same construction project, because each can effect the ability of the other to perform. It is important, for example, for each contractor to be familiar with the methods of operation of the other contractors, including their ability to perform, their financial solvency, the nature and efficiency of their workmen and the source of their labor supply. Where a general contractor and a subcontracting system

are used, it also becomes important for the owner or the architect-engineer to know in advance the identity of each subcontractor whom the general or prime contractor is going to use. Frequently the owner or architect-engineer requires the general contractor to list his subcontractors when he submits his bid. Frequently it is specified that the contractor cannot change subcontractors without approval.

For these various reasons it cannot be truthfully said that the contractors on the same construction project are strangers to each other or are "neutral" or "innocent" third parties so far as labor policies and industrial relations are concerned. To the contrary, it is crucially important for every contractor to know whether or not the other contractors on the job secure their workmen pursuant to and in accordance with a collective bargaining agreement between the contractor and a building trades union. The existence or absence of such an agreement may make all the difference between harmonious and stormy industrial relations in the course of contract performance. It is the contractor's business, therefore, to ascertain the nature of working conditions which will prevail at the job site and the risk of misestimating these working conditions is one of the normal and accepted business risks of the construction industry.

Despite the very close relationships between contractors and between workers on construction projects, nevertheless,

the recognized legal differences persist. Each contractor is a separate and independent entity. Each is a separate and independent employer of his own labor. Workmen jointly engaged on the same project at the same time may be employed by as many as a dozen separate and distinct but functionally closely related employers. These are, as Mr. Justice William O. Douglas so aptly describes them in his dissent in the Denver case, supra, "fortuitous business arrangements that have no significance so far as the evils of the secondary boycott are concerned."

Yet they do have significance so far as section 8(b)(4)(B) of the National Labor Relations Act, is concerned. This section makes it an unfair labor practice for a labor union to induce employees to refuse to work with an object of forcing one contractor or employer to cease doing business with another. A strike against a union contractor which protests employment of non union men by another contractor on the job would, according to the Denver case, violate section 8(b)(4)(B).

As pointed out in the dissent in the Denver case, "the picketing would undoubtedly have been legal if there had been no subcontractor involved. The presence of the subcontractor does not alter one whit the realities of the situation; the protest of the union is precisely the same."

Thus construction workers do not enjoy the same rights and privileges conferred upon factory workers. Due to technical contractual relationships on the

construction job site, given express recognition in the Denver case, these workers are effectively denied the right to strike to secure union conditions even though this right is effectively preserved for factory workers.

S. 1479 would, in effect, overrule the Denver case by providing an exception to section 8(b)(4)(B) for construction work at a common situs. The amendment legalizes any strike or refusal to work directed toward any of the contractors engaged in operations at the construction site wherever a labor dispute on working conditions exists and the terms of an applicable collective bargaining agreement are not being violated.

The simple purpose of this amendment has met with general approval. In fact the exact terms of this bill have been endorsed by the leadership on both sides of the aisle in both Houses of Congress. The White House has repeatedly requested this amendment, and early action this session has been promised by those who are in a position to make good on their promises. All of these facts have been very ably presented to this subcommittee in great detail. They form a vital part of the record in these hearings and it would serve no useful purpose for me to review them once more in detail at this time.

In requesting this subcommittee to act promptly and favorably on this measure, I wish to make one closing observation on the Denver case, as viewed by the dissenting

justices. They declared, quite rightly in that case, that "the employment of union and non union men on the same job is a basic protest in trade union history. That was the protest here. The union was not out to destroy the contractor because of his anti-union attitude. The union was not pursuing the contractor to other jobs. All the union asked was that union men not be compelled to work alongside non union men on the same job."

I respectfully submit that we should permanently restore this traditional right of building tradesmen by passing S. 1479 at the earliest possible date. To this end, it is my hope that the subcommittee will speed this bill on its way to the floor of the Senate for a vote.

STATEMENT OF

MARTIN J. WARD, GENERAL PRESIDENT

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES

OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE

UNITED STATES AND CANADA

FOR SUBMISSION TO

THE SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

JULY 9, 1975

AS GENERAL PRESIDENT OF THE UNITED ASSOCIATION OF PLUMBERS AND PIPEFITTERS, I SPEAK FOR 320,000 MEMBERS OF MY INTERNATIONAL UNION. FOR NEARLY A QUARTER OF A CENTURY WE HAVE JOINED OUR VOICES TO OTHER BUILDING TRADES UNIONS, WITH INDUSTRIAL UNIONS, WITH TRADE ASSOCIATIONS OF CONTRACTORS DOING BUSINESS IN THE CONSTRUCTION INDUSTRY, WITH PRESIDENTS OF THE UNITED STATES AND WITH HUNDREDS OF MEMBERS OF THE CONGRESS URGING ENACTMENT OF LEGISLATION TO CORRECT A GLARING INEQUITY IN THE ADMINISTRATION OF THE NATIONAL LABOR RELATIONS ACT.

THE BILL NOW BEING CONSIDERED BY THE SUBCOMMITTEE--S. 1479--HAS, IN MY OPINION, BEEN SO CAREFULLY DRAWN THAT IT WILL ANSWER ALL PAST OBJECTIONS TO ENACTMENT OF THIS REMEDIAL LEGISLATION.

ENDORSEMENT OF THIS BILL BY REPRESENTATIVES OF BOTH

LABOR AND MANAGEMENT AND BY SPOKESMEN FOR BOTH THE REPUBLICAN AND THE DEMOCRATIC PARTIES SHOULD MAKE IT ABUNDANTLY CLEAR THAT THIS ISSUE IS NON-PARTISAN. AS THE SHORT TITLE OF THE BILL SAYS, S. 1479 WILL MERELY PROTECT THE ECONOMIC RIGHTS OF LABOR IN THE BUILDING AND CONSTRUCTION INDUSTRY BY PROVIDING FOR EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS.

I KNOW THAT GENERAL PRESIDENT ROBERT A. GEORGINE OF THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT WILL PRESENT A THOROUGH AND COMPREHENSIVE STATEMENT OF BUILDING CRAFTSMEN ON THIS MEASURE. TO AVOID BEING REPETITIVE, I WANT TO STATE MY COMPLETE CONCURRENCE IN THE POSITION HE WILL SET FORTH FOR THE BENEFIT OF THIS SUBCOMMITTEE.

ONE OF OUR OWN UNITED ASSOCIATION LOCAL UNIONS WAS AMONG AFFILIATES OF THE DENVER BUILDING AND CONSTRUCTION TRADES COUNCIL WHO IN 1951, WERE CHARGED WITH VIOLATIONS OF THE SECONDARY BOYCOTT PROVISIONS OF THE TAFT-HARTLEY ACT. THE CHARGE WAS UPHELD BY THE N.L.R.B., LATER REVERSED BY THE COURT OF APPEALS AND STILL LATER UPHELD BY THE U.S. SUPREME COURT. OVER THE YEARS SINCE, MANY OTHER UNITED ASSOCIATION LOCAL UNIONS HAVE FALLEN VICTIM TO THE APPLICATION OF THE DENVER DECISION TO THOUSANDS OF DISPUTES AT CONSTRUCTION SITES ACROSS THE LENGTH AND BREADTH OF THE NATION.

S. 1479 WILL RESTORE TO US THE RIGHT TO PEACEFULLY PICKET A JOB WHERE UNFAIR WORKING CONDITIONS EXIST. WE DO NOT SEEK TO LEGALIZE SECONDARY BOYCOTTS. WE SEEK ONLY AN INTERPRETATION OF THE PHRASE "SECONDARY BOYCOTT" THAT IS LOGICALLY SOUND. IF WE GET THAT FAIR INTERPRETATION AS PROVIDED IN S. 1479 THE OTHERWISE LEGAL RIGHT FOR CRAFT UNIONS TO PEACEFULL PICKETING WILL BE RESOTRED AS EQUITY DEMANDS.

I AM CONFIDENT THAT THE MEMBERS OF THIS SUBCOMMITTEE WILL FINALLY GIVE THIS LEGISLATION THE KIND OF ENTHUSIASTIC APPROVAL IT NEEDS TO MOVE IT SUCCESSFULLY THROUGH THE LEGISLATIVE PROCESS AND TO THE PRESIDENT'S DESK.

THANK YOU.

STATEMENT OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS

OF AMERICA IN SUPPORT OF S. 1479

The United Brotherhood of Carpenters and Joiners of America welcomes the opportunity to submit a statement on behalf of its more than 850,000 members in support of S. 1479, a bill introduced by Senators Williams and Javits for themselves and many of their colleagues. The United Brotherhood, whose membership includes hundreds of thousands of members engaged in American industrial employment and many hundreds of thousands of other members engaged in construction work, feels keenly the need for this legislation that would protect the economic rights of labor in the building and construction industry by providing for equal treatment for craft and industrial workers.

It is not simply that we are troubled by the unfairness of distinct and unequal treatment accorded our construction members engaged in legitimate primary picketing. Nor are we merely troubled that this distinct treatment has evolved into an offensively unequal doctrine without any basis in statue whatsoever. We are most concerned that the application of these unequal rules, called "secondary activity rules", has been catastrophic to the economic and civil rights of our construction members in all construction picketing where more than one employer engages in work at a single site (that is, virtually all construction picketing). For, our difficulty today is not simply in determining what conduct is unlawful and prohibiting it. The difficulty is rather in apprehending scope for any lawful conduct at all. It is now virtually impossible to find any range of conduct that is lawful for a union that wishes to engage in legitimate primary picketing at a common site in the construction industry. The ease with which a clever attorney can discover ambiguous conduct in wholly legitimate construction picketing that will taint the entire course of that picketing breeds cynicism about our institutions and contempt for our once widely respected labor laws. It is frustrating and discourages legitimate courses of conduct in labor disputes.

The distinction between primary and secondary picketing, whether in industry or construction, is itself nearly impossible to explain and we don't purport to do so here. As the Supreme Court stated in 1969 in Brotherhood of RR Trainmen v. Jacksonville Terminal Co., 1/ "(T)he common law of labor relations has created no concept more elusive than that on 'secondary' conduct; it has drawn no lines more arbitrary, tenuous, and shifting than those separating 'primary' from 'secondary' activities."

1/ 394 U.S. 369, 386 (1969). See also National Woodwork v NLRB (and United Brotherhood), 386 U. S. 612, 626-627 (1967).

Now, a union that has a dispute with employer A in Chicago, and which travels to Pittsburgh to picket employer B, a supplier, to force B by picketing to cease dealing with A, may well have engaged in 'secondary' conduct; and perhaps the union has carried its dispute beyond the point which Congress feels it must reasonably allow in balancing on the one hand the right to picket, and on the other the policies that seek to protect neutrals and limit the scope of labor disputes. But, where employers A and B are working side by side on the same site, whether that site is an industrial park, shopping center, or construction site, balancing those equities becomes more difficult and across-the-board restrictions on appeals by picketers to employees working on the common site may effectively thwart all primary picketing at that common site.

To protect legitimate primary picketing at common sites in the industrial context the Supreme Court developed the concept of "related work". In the industrial situation, the Supreme Court in the General Electric[2/] case held that an appeal by picketing workers at a common site to "neutral" employees whose tasks aid or are related to the everyday operations of the primary employer constitutes, as a matter of law, traditional primary activity. So when IUE struck GE maintenance activities and GE set up a separate gate for a maintenance subcontractor, the GE maintenance employees were engaged in lawful primary activity when they appealed at the reserve gate to the maintenance employees of the subcontractor with whom they worked, side-by side, in a common industrial process. Any other result, the Supreme Court held, would have thwarted legitimate primary activity at the common site.

A sharply divided National Labor Relations Board, in a case involving IBEW electrical work, and piledriver work within the jurisdiction of the United Brotherhood of Carpenters, refused to apply this "related work" concept to construction sites, without any statutory basis to justify the different treatment. In this landmark case, known as Markwell and Hartz,[3/] the Board, 3 to 2 held, relying on the Denver Building Trades[4/] decision which did not even discuss the related work concept, that for some inexplicable reason, the doctrine could not apply to construction situations. The two dissenting members, Fanning and Jenkins, who are today the senior members of the National Labor Relations Board, contended that the related work concept

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2/ 366 U.S. 667 (1961).

3/ 155 NLRB 319 (1965).

4/ 341 U.S. 675 (1951).

should be applied to legitimize the common site construction picketers' appeals to neutral employees performing related work at the site of the dispute. They observed: "(W)e believe that, because the Supreme Court clearly equated picket line appeals to employees of neutral subcontractors whose tasks aid the everyday operations of the struck employer with similar appeals to employees to neutral suppliers and deliverers, there is no warrant for distinguishing between the two situations (manufacturing and construction) in this case..."

The dissenting members in Markwell further determined that the piledriving and electrical work performed by the subcontractors was related to the work of the general contractor, because, they found, the subcontractors' employees were working alongside the contractor's employees, and they were contributing to the work of the general contractor. The dissenting members would have found no violation of Section 8(b)4 of the Act for the picketing at the reserved gates set up for the employees of the subcontractors. Despite this strong dissent by these Senior Board members, the distinction for construction workers caught hold in the Courts without statutory justification.

The Bill we support today would permit that picketing which the Supreme Cour held was lawful and primary in the General Electric case, and it would legitimize such picketing whether it was conducted in an industrial context or the construction industry. It would wipe the slate clean of a distinction that never had any legislative base. Nor did it ever have a practical base for, as Professor Norman Cantor of Rutgers University Law School has pointed out, "To the extent that a construction project is different from a manufacturing enterprise, the differences militate toward more tolerance of separate gate picketing among the building trades." 27 Rutgers Law Review 641 (1974).

For truly in the construction of a building, the process is fully integrated and interdependent. It is not only impossible to engage in legitimate primary picketing without enmeshing neutral employees, but appeals to those employees with whom the picketers work in a common enterprise is, in fact, a primary appeal and a part of the primary activity itself. It is not secondary any more than the activity in the General Electric case in a manufacturing setting was secondary.

The law as presently applied has unreasonably restricted legitimate primary activity of United Brotherhood members ever since our piledriver members and other building trades were made the subject of new law in the Markwell case in 1965 without legislative authority. Today, if our members picket and clearly identify the primary on picket signs and the primary's employees a fortuitously absent on a weekend during the picketing, the conduct is deemed

wholly secondary no matter what our expressed motivation is. United Brotherhood and Spar Builders, 131 NLRB 1052. Or consider the ambiguity of this situation: at a common site, in protest against the use of a non-union subcontractor, a Plumbers' local commenced picketing. The Carpenters' steward called the Carpenters' hall about the picketing and thereafter left the job. Although there was much confusion as to the reason the other carpenters left the job and whether they stopped work before the steward returned, the Board concluded the stewards' cessation of work was a key factor in inducing other employees to quit and a violation of the secondary boycott provisions of the act was found. Keith Riggs Plumbing and Heating Contractor, 137 NLRB 1125.

The number and range of such hairline distinctions appears endless. And the sheer complexity of the rules applied in common site picketing situations in construction which the NLRB has invented to discover the "true" object of the picketing is destructive of respect for law.

What we seek is a fair appreciation by Congress of the interrelated nature of the building and construction process at a common site in order that legitimate primary activity can be secure as was originally intended in the Act. We want to be able to advise our members fairly about the parameters of legitimate conduct and we are frustrated by our present inability to give such basic counsel. We ask only for fairness and equal treatment and for protection of those basic labor rights which Congress sought originally to guarantee at Section 7 of the Act. We believe S. 1479 would implement the limited ends we have described.

For the United Brotherhood of Carpenters
and Joiners of America

William Sidell

GENERAL PRESIDENT

May 30, 1975

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL
FOR THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON S. 1479, AUTHORIZING SECONDARY BOYCOTTS
IN THE CONSTRUCTION INDUSTRY
July 22, 1975

The United States Industrial Council is an organization representing some 3,500 business firms across the nation employing more than 3,000,000 people. Among USIC members are firms such as Champion Spark Plugs, National Airlines, Rockwell International, Hyster Corporation, Robertshaw Controls Company, Tennessee Eastman, Tenneco and General Motors.

USIC has its principal office in Nashville, Tennessee, with an additional office in Washington, D. C. Our primary concern is the preservation of the free enterprise system and the free market economy which have made this nation great. Essential to the preservation of a free market -- particularly in the construction industry -- is the improvement of productivity and efficiency, which can only be accomplished by the unrestricted development of manpower, materials and equipment.

Rapid increases in construction costs as part of overall costs have become a major factor in industrial planning for expansion of production and employment. As major consumers of construction, the USIC's member firms strongly oppose S.1479.

Enactment of this bill would enable a labor union involved in a dispute with a single contractor to shut down an entire construction site. A construction site might be considered to be an entire military base, an industrial park, an entire "planned" community, a highway, pipeline or energy-producing facility. The cost in both time and money of such a shutdown would be borne not only by the unions and contractors involved in the dispute, but by other business firms and ultimately by consumers and taxpayers as well.

By allowing construction unions to conduct what amount to secondary boycotts

against employers and workers not involved in their primary dispute, Congress would be giving the sanction of federal law to union monopoly power in the construction industry. Armed with the power to shut down entire projects, union officials would be able to dictate what subcontractors, suppliers and other companies a contractor could do business with, as well as the methods and materials to be used in construction. They would also be able to force union membership on unwilling workers.

Previous experience has shown that the results are inevitable: more frequent strikes, increased violence, higher unemployment in the construction industry, restriction of time-saving and more economical building methods and materials, and increased inflation due to the higher cost of construction.

Although union officials claim that S. 1479 would "protect" the rights of construction workers, the bill actually would give those union officials special license to abuse the rights of individual employees who choose not to join a union, as well as the rights of non-union employers. Unable to sell the benefits of union membership to <u>all</u> construction workers, union officials have mounted a campaign to require union membership as a condition of employment in the building trades. They undoubtedly would use the privileges granted by S. 1479 to step up the campaign of violence and intimidation which has plagued the construction industry in recent years. Union terrorist attacks have become an all-too-common organizing technique in areas where "open shop" or "merit shop" contractors are increasing their share of the building market. In the Philadelphia area, for example, the Building and Construction Trades Council's campaign to unionize Altemose Construction Company has escalated into open warfare. A rampage by 1,000 union members in June, 1972, levelled an Altemose construction site at Valley Forge, Pennsylvania, destroying over $300,000 worth of property and equipment. Since then Altemose and other merit shop contractors have been subjected to a continuing campaign of threats and terrorist attacks for disobeying the Trades Council's orders to hire only union subcontractors.

Enactment of S. 1479 would encourage -- not discourage -- such violence.

This would add another element of uncertainty to contract construction, which already is a high-risk business. Each contractor stakes his business and livelihood on his ability to estimate cost and time requirements, and to complete the job according to the developer's specifications, on schedule and at the most economical price. He must be free to choose the subcontractors, methods and materials which will enable him to achieve these goals -- not be forced to submit to the dictates of union officials whose primary goal is to increase their membership and/or their own personal income.

An example of a successful contractor is Joe M. Rodgers & Associates, Inc., a member of the United States Industrial Council. Rodgers & Associates is the largest general contractor in Tennessee and one of the fastest growing in the nation. During the past nine years, the firm has completed over 300 projects, varying in size from a few thousand dollars to $25 million. Less than 2 percent of these projects have been manned entirely by union or open-shop subcontractors.

In 1971, Joe M. Rodgers & Associates was awarded a contract by Vanderbilt University to construct an engineering department building. Rodgers in turn awarded over fifty percent of the subcontracts to union-shop firms. Within one week, a labor union posted a picket at the construction site protesting the awarding of <u>any</u> of the work to non-union subcontractors. The picket remained at the site for approximately one year, but construction workers were able to use "separate gates" and complete the project on time. Under S. 1479, union pickets could have shut down the entire project.

While Rodgers & Associates was constructing a $7 million hospital in Chattanooga, Tennessee, which was manned with 90 percent union subcontractors, two pickets began protesting Rodgers' building activities in Roanoke, Virginia. The Chattanooga project was shut down for two days until separate gates were installed. All subcontractors then were able to return to work and continue the job behind the two-man picket line. Under S. 1479, those two men could legally have prevented the subcontractors from returning to their jobs.

On some construction projects, Rodgers & Associates uses all union subcontractors. On one such job, the multi-million dollar Park View Hospital in Nashville, Tennessee, the local plumbers' union representative pulled his men off the job in a jurisdictional dispute with the carpenter's union over the installation of wood blocking in the bathroom walls. Using the "separate gate" system, sixty other union employees continued working, earning over $20,000 during the ten days it took to settle the jurisdicational dispute. Although these other union workers were not involved in the dispute between the two union officials, S. 1479 would have denied them their right to continue on the job.

Enactment of S. 1479 could cause every minor labor dispute to escalate into a full-scale building site shutdown. The impact on the general economy would be significant, for the construction industry is the largest in the nation, employing more than 10 percent of the total labor force and contributing more than 12 percent to the gross economic product. Traditionally, the construction industry has been considered a barometer of the nation's economic health. Crippling strikes in the building trades would seriously retard recovery from the current recession.

In summary, the United States Industrial Council opposes S. 1479 because it would seriously restrict the competition which is the backbone of the American free enterprise economic system. It would increase the monopoly power of labor union officials at the expense of businessmen, their employees, and consumers in general. We urge the Committee to remember that union officials who are so loudly espousing this legislation do not speak for the majority of "labor," but only for the 25 percent of the workforce who actually belong to unions. The 75 percent of American working men and women who have chosen not to join a union are among the taxpayers who would be hardest hit by enactment of S.1479.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE SUBCOMMITTEE ON LABOR
OF THE SENATE COMMITTEE LABOR AND PUBLIC WELFARE
REGARDING S. 1479--COMMON SITUS PICKETING LEGISLATION

Presented by
John C. Datt, Director, Congressional Relations

July 9, 1975

Farm Bureau is a voluntary association of 2,393,731 families in forty-nine states and Puerto Rico, constituting the largest general farm organization in this country.

At the annual meeting of the American Farm Bureau Federation in January, 1975, the voting delegates of the member State Farm Bureaus unanimously adopted the following statement as a part of an overall policy on labor-management relations:

> "We uphold the right of employees to bargain collectively. However, we condemn the use by either labor or management of force, coercion, intimidation, secondary boycotts, or other unfair means designed to force its will upon the other."

Thus we are opposed to S. 1479 and urge the Subcommittee to reject this bill for the following reasons:

(1) Common situs picketing is a form of secondary boycott and and should not be legalized by any action of the Congress. During recent years farmers have learned at first hand how the use of the secondary boycott, exercised through economic pressure or innocent third parties, can disrupt production and marketing.

(2) The monopoly power of labor unions in many sectors of our economy, including the construction industry, is already excessive and should be reduced, rather than enhanced.

(3) This bill undoubtedly would result in highly coerced wage settlements in the construction industry, thus driving up the cost of

construction to levels that could not be achieved through the free exercise of collective bargaining. This would be contrary to the public interest.

(4) It is fundamentally unfair to workers and their employers who are not involved in a labor dispute at a construction site to allow another group of employees to engage in activities that cause the shutdown of the entire construction site.

(5) We are not impressed with the limitations on the immunity from Section 8(b)(4)(B) spelled out in this bill. In our opinion the bill clearly would authorize every construction union normally present on a construction site to picket and strike the total site and cause work stoppages on the part of all employees on the site, even though only a small number of such employees may be actually involved in the dispute.

(6) We know of no legitimate need for this legislation. Employees in the construction trades are among the highest paid workers in this country. We see no evidence that these workers have suffered from the present prohibition against common situs picketing.

The Congress should place the public consideration above the special interests of any one labor union, any group of labor unions, or any industry. The cost of construction is already burdensome to homebuyers and to business. Congressional passage of a bill that would add to these inflated costs through increased work stoppages or undue exercise of monopoly power would be highly irresponsible.

APPENDIX B

MGMWSHT HSA
1-029397C192 07/11/75
TWX AMALMEATCUT
3 CHICAGO, ILL., JULY 11, 1975
ZIP 20510

western union Mailgram

UNITED STATES POSTAL SERVICE U.S.MAIL

SENATOR HARRISON A. WILLIAMS
UNITED STATES SENATE
COMMITTEE ON LABOR & PUBLIC WELFARE
WASHINGTON, D. C. 20510

OUR ORGANIZATION WITH ITS 550,000 MEMBERS HEARTILY RECOMMENDS PASSAGE OF S-1479 WHICH WILL PROVIDE EQUAL TREATMENT OF CRAFT AS WELL AS INDUSTRIAL WORKERS. FOR MORE THAN A QUARTER OF A CENTURY AN UNFAIR RESTRICTION HAS BEEN PLACED ON SOME UNIONS UNDER SECTION 8(B) 4 OF THE TAFT-HARTLEY ACT AND THIS SHOULD BE ABOLISHED. EVEN WITH FIVE PRESIDENTS OF THE UNITED STATES OF BOTH POLITICAL PARTIES HAVING ENDORSED LEGISLATION TO CORRECT THIS INEQUITY, NEVERTHELESS IT HAS NOT EVEN TO THIS DAY BEEN ACCOMPLISHED. ALL SECRETARIES OF LABOR, FROM DURKIN TO BRENNAN HAVE WORKED FOR ITS ENACTMENT AND STILL THE LAW HAS NOT BEEN PASSED. WE SINCERELY URGE YOU TO USE YOUR GOOD EFFORTS TO RECTIFY, AT THIS LATE DATE, ALL THE YEARS OF WAITING BY MAKING A STRONG RECOMMENDATION THAT S-1479 BE ADOPTED AND BECOME THE LAW NOW.

WE WOULD APPRECIATE THIS STATEMENT APPEARING IN THE RECORD.

PATRICK E. GORMAN, SECY-TREAS.
AMALGAMATED MEAT CUTTERS AND
BUTCHER WORKMEN OF N. A. , AFL-CIO
2800 N. SHERIDAN ROAD
CHICAGO, ILLINOIS 60657

14:33 EST

MGMWSHT HSA

JUL 14 1975

Resolution in Support of Situs Picketing
(Equal Treatment of Craft and Industrial Workers)

Whereas members of building trades unions since 1949, have been denied their right to peacefully picket at their places of employment because of an erroneous interpretation of Section 8(b) (4) of the Taft-Hartley Act by the National Labor Relations Board, and

Whereas unions of employes in other industries are accorded this right in times of labor-management disputes, including the garment industry which has a contractor-subcontractor relationship equivalent to that which exists in the construction industry, and

Whereas every President of the United States since 1949 has recognized the injustice of this denial of construction workers' rights and has called for amendments to the Taft-Hartley Act to restore the right of building tradesmen to peacefully picket at job sites, and

Whereas a legislative bill, (S1479), now before the Senate would return equal treatment in picketing to building trades unions, now therefore be it

Resolved that the Baltimore Building and Construction Trades Council, AFL-CIO, go on record in support of (S1479), and urge its enactment at the earliest possible time so that discrimination against building tradesmen be terminated and their right to peacefully picket their places of employment be restored.

Adopted June 2, 1975 by the
Executive Board of the
Baltimore Building & Construction
Trades Council, AFL-CIO

Edward Courtney, President

Building and Construction Trades Council of the Metropolitan District

Affiliated to the

Building and Construction Trades Department

AFL—CIO

TERRITORIAL JURISDICTION

Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Chelsea, Dedham, Everett, Malden, Medford, Melrose, Milton, Norwood, Reading, Revere, Somerville, Stoneham, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the Islands of Boston Harbor.

47

Telephone
(617) 426-1121

120 BOYLSTON STREET
Room 903
BOSTON, MASS. 02116

RESOLUTION

Passed by the Boston Building and Construction Trades Council on May 29, 1975

WHEREAS the Boston Building and Construction Trades Council representing 30,000 members in 32 local of various international unions of the American Federation of Labor-Congress of Industrial Organizations has been keenly aware that its members have been victimized by judicial "legislation" forbidding their full right to picket sites controlled by various employers who use the law as a shield to protect their unfair labor practices, and

WHEREAS in other industries the picketing rights forbidden to the Building Trades Unions are perfectly legal, proper and in complete accord with the law as interpreted by the National Labor Relations Board and the courts, and

WHEREAS labor unions in non-construction industries are allowed without restrictions to picket the situs where the primary offending employer is doing business, and

WHEREAS the National Labor Relations Board and the courts since 1949 have emasculated the rights of labor unions in the construction industry by forbidding the picketing of sites where the primary offending employer is doing business except under stringent restrictions which make impotent the effect of the picketing, and

WHEREAS the restrictions of the Board and the Court forbid the

manifestations of the time honored solidarity of trade union members in the face of multitudinous forays by employers attaching their working conditions and wages, and

WHEREAS in the construction industry one primary employer controls the various satelite employers and the situs and, hiding behind the judicially approved edicts of the National Labor Relations Board, is granted immunity by Board decisions dripping with sophism and "ivory tower" mentality, and

WHEREAS the Supreme Court decision in N.L.R.B. v. Denver Building Trades Council and it's progenies deny Building Trade Unions the picketing rights of all other unions, and

WHEREAS this injustice of second class status has been condemned by Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon and they sought"equal treatment of craft and industrial unions",

NOW BE IT RESOLVED that this Council inform the Congressional Representatives of Massachusetts of this position and seek their support in favor of H.R. 5900 and S. 1479, and

BE IT FURTHER RESOLVED that each Congressional Representative be forwarded a copy of this resolution and that their individual response be publicly promulgated and that their votes be appropriately dealt with.

Brotherhood Railway Carmen
of the United States and Canada
Affiliated with A. F. L. - C. I. O. and C. L. C.
Office of
O. W. Jacobson, Assistant General President
Carmen's Building, 4929 Main Street
Kansas City, Missouri 64112

Telephone: LOgan 1-1112
Area Code 816
62

July 8, 1975

Senator Harrison A. Williams
U. S. Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Dear Senator Williams:

It has been brought to our attention that hearings are scheduled to commence before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare beginning Wednesday, July 9, 1975 on Equal Treatment of Craft and Industrial Workers (S 1479).

The support of your Committee of S 1479, a bill to protect the economic rights of labor in the Building and Construction Industry by providing for equal treatment of craft and Industrial Workers is of the utmost importance if we are to correct this inequity.

I respectfully request that this statement be included in the Senate Proceedings.

Respectfully yours,

O. W. Jacobson

Assistant General President

OWJ/mm

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
RECEIVED
JUL 10 1975

POLICY STATEMENT

ADOPTED JUNE 5, 1975

BY THE

BUILDING AND CONSTRUCTION TRADES COUNCIL OF DELAWARE

ON

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

It is time the Congress of the United States enacted what four Presidents from both political parties have long recognized as just -- the so-called Situs Picketing Bill.

Presidents Truman, Eisenhower, Kennedy, and Johnson, all endorsed the principle of situs picketing, which would, as the present legislation states, "protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial unions".

Therefore, We, the Building and Construction Trades Council of Delaware, urge Congress to bring to an early, definitive vote H. R. 5900, introduced by Representative Frank Thompson (D-N.J.), and S. 1479, introduced by Senator Harrison Williams (D-N.J.).

Building and Construction Trades
Council of Delaware
223 S. DuPont Highway
New Castle, Delaware 19720

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ORANGE COUNTY

AFFILIATED WITH
BUILDING AND CONSTRUCTION TRADES DEPARTMENT
AFL - CIO

403 NORTH HARBOR BOULEVARD
SANTA ANA, CALIFORNIA 92703
(714) 531-4583

ALFRED R. GRAY
EXECUTIVE SECRETARY

MAY 30, 1975

TELEGRAMS TO: Congressmen; Jerry Patterson - Charles E. Wiggins -
Mark W. Hannaford - Andrew Hinshaw

Chairman: Frank Thompson, House Subcommittee on Labor-
Management Relations

A special meeting of the Executive Board of this Council was called this morning to impress upon our legislators the urgent need for passage of H.R. 5900.

Members in attendance were: Marv Markham, I.B.E.W. #441 - Vinson Purvis, Operating Engineers #12 - Don Wade, Pipe Trades #582 - Carl Moore, Sheet Metal Workers #420 - Al Gray, Executive Secretary - Rollie Tackett, Painters #686 - Bill Barber, Elevator Constructors #18 - William Lewis, Asbestos Workers #5 - George Stanford, Painters #686 - Jerry McClelland, Glaziers #636 - Ron Fitzmaurice, Painters #1817 - Dexter Hemeon, Resilient Floor & Decorative Covering #1247 - Jack White, Lathers #440 - Earl Wooden, Painters #686 - Robert Miller, District Council of Carpenters.

These members represent over 30,000 construction workers in Orange County and feel that now is the time for the Congress to clarify the Taft-Hartley Act and restore Equal Treatment of Craft and Industrial Workers.

We urge you to do your utmost to help the passage of H.R. 5900.

Thank you for any and all consideration.

Sincerely yours,

Alfred R. Gray, Executive Secretary
Building & Construction Trades
Council of Orange County, AFL-CIO

ot/opeiu#30
afl-cio

cc: Abel Silva, Building Trades Department
All Affiliates of the Building and
Construction Trades Council of
Orange County, AFL-CIO

The BUILDING and CONSTRUCTION TRADES COUNCIL of San Mateo County

300 EIGHTH AVENUE
SAN MATEO, CALIFORNIA 94401
TELEPHONE (415) 343-3775

A Council of
San Mateo County Construction Unions

July 3, 1975

SUBCOMMITTEE ON LA
RECEIVED
JUL 8 1975

Senator Harrison Williams, Jr.
U.S. Senate Committee on Labor & Public Welfare
Washington, D.C. 20510

Dear Senator Williams:

Please put the following resolution supporting S-1479, into the Senate record.

Robert Gilmore, Business Manager

RESOLUTION

Whereas: A bill has been pending before the United States Congress for many years, equalizing the rights of craft and industrial workers.

Whereas: A bill has been introduced this year with the same intent known as S-1479, Harrison Williams Equal Treatment of Craft and Industrial Workers.

Whereas: Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon all supported previous similar bills.

Whereas: The depression in the Construction industry has made matters worse with workers being exploited with sub-standard wages.

Whereas: The passage of this bill may be necessary to our very existence.

— Now therefore be it resolved: That the Building & Construction Trades Council of San Mateo County hereby wholeheartedly endorses S-1479 and urges all Senators to vote favorably on this bill as it appears in committee and on the floor.

Adopted at Executive Board meeting on July 3, 1975.

Phones 224-5023
224-5024
224-1828
Commerce
9-281

Columbia-Pacific

EARL B. KIRKLAND
Executive Sec.-Treas.

BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO
Affiliated with Building Trades Department, AFL-CIO

Room 304, Portland Labor Center • 201 S. W. Arthur St. • Portland, Oregon 97201

RESOLUTION

WHEREAS, the Columbia Pacific Building and Construction Trades Council and their 44 affiliates have for twenty six years been denied by an interpretation of the NLRB the same right to peacefully picket at their employment site as is now accorded unions in other industries in a labor dispute, and

WHEREAS, this erroneous interpretation of Section 8 (b) (4) (b) of the Taft Hartley Act did not take into account the unique relationship between general contractors and subcontractors in the construction industry, wherein said general contractors are entirely responsible for their sub-contractors from the bidding stage to completion of a project, and

WHEREAS, General Contractors have used this technicality in the Law to establish substandard wages and conditions and fatten their own bankrolls at the expense of the worker, and

WHERAS, the only way to bring to an end this unscrupulous practice is to repeal the situs picketing section of the Taft Hartley Act, and make the General Contractor responsible for his subcontractors on a given project, and

WHEREAS, H R 5900 is now scheduled for hearings to commence before the Labor Sub-committee of the House Committee on Education & Labor, now therefore be it

RESOLVED: That the Columbia Pacific Building and Construction Trades Council, AFL-CIO reaffirm our position in favor of the repeal of Section 8 (b) 4 (b), of the Taft Hartley Act, and go on record unanimously in support of H R 5900 relative to same, and be it further

RESOLVED: That we respectfully request that you sincerely join with Congressman Frank Thompson in co-sponsoring H R 5900.

Respectfully yours,

COLUMBIA PACIFIC BUILDING AND
CONSTRUCTION TRADES COUNCIL

Earl B. Kirkland

Earl B. Kirkland, Executive Secy.

Communications

GLENN E. WATTS, *President*

CWA Workers of America

(AFFILIATED WITH AFL-CIO)
1925 K STREET, N.W.
WASHINGTON, D. C. 20006
TELEPHONE: XXXXXXXXXXX 785-6700

July 15, 1975

File: 1.14

The Honorable Harrison A. Williams
U. S. Senate
Washington, D. C. 20510

My dear Senator Williams:

The Communications Workers of America, which represents more than 600,000 workingpeople in collective bargaining, wholeheartedly endorses the enactment of S. 1479, legislation which you introduced in the 94th Congress on April 18.

The bill you have sponsored dealing with equal treatment of craft and industrial workers would correct a quarter-century old inequity in federal labor law by allowing unions to engage in peaceful picketing at common construction sites. Currently workers involved in labor disputes at construction sites are treated as second-class citizens, not accorded equal rights permitted workers who are involved in picketing in parallel disputes in other industries.

For example, jobbers, manufacturers, contractors and subcontractors engaged in the production of goods in the clothing industry have long been recognized as performing parts of an interdependent production process. Thus they are not considered "neutral parties" by the National Labor Relations Board.

S. 1479 would simply apply the same principle of law used in the garment industry to the similar economic relationships that prevail between employers who are involved in a joint economic process in the construction industry. The legislation you have proposed would provide recognition of the basic fact that contractors working together on a building site are engaged in a common economic enterprise. Hence, there is no reason to consider primary picketing a "secondary boycott."

CWA is fully cognizant of the fact that the legislation you have proposed is limited in scope to the building and construction industry and picketing at these jobsites only. The legislation would have no effect outside the building industry and construction worksites.

S. 1479 also does not seek to mandate a "closed shop," authorize illegal strikes or allow any other action that is unlawful.

In conclusion, we are hopeful that the 94th Congress will bear witness to the enactment of this long-sought legislation which you have championed on behalf of America's workingpeople.

Sincerely yours,

Glenn E. Watts

Glenn E. Watts
President

THE DAYTON BUILDING TRADES COUNCIL

THOMAS HUTCHINSON, Executive Secretary OLION COLSTON, Recording Secretary

HALL AND OFFICE: 1407 EAST THIRD STREET
DAYTON, OHIO 45403
Phone 223-3255

AFFILIATES:
Asbestos Workers
Boilermakers
Brick Layers
Building Laborers
Building Truckers
Carpenters
Cement Finishers
Electrical Workers
Elevator Constructors
Glaziers
Hod Carriers
Hoisting Engineers
Iron Workers

AFFILIATES:
Lathers
Marble Setters
Painters
Paper Hangers
Plasterers
Plumbers
Roofers
Sheet Metal Workers
Sign Writers
Steamfitters
Teamsters
Tile Layers

July 11, 1975

Senator Harrison Williams, Chairman
Committee on Labor and Public Welfare
United States Senate
Washington, D.C. 20510

Sir:

At our regular meeting July 8, 1975 the Dayton Building Trades Council adopted a Resolution in support of S.1479.

Be it understood that the Building Trades of Dayton, Ohio has taken action to support S.1479 introduced by Senator Harrison Williams.

Be it understood we pledge our united support of this legislation to achieve equal treatment for the building and construction trades industry.

Be it understood that for the past twenty five years five Presidents of the United States of both political parties and Secretaries of Labor of both political parties have worked to secure the enactment of S.1479.

Be it understood that long hours of hearings have been held by the appropiate committees of both Houses of Congress. We hope that future hearings can be held to a minimum as now is the time to act. We urge and ask for your support of the bill S.1479.

Please have this presented for inclusion in the record.

Sincerely,

Thomas Hutchinson

Thomas Hutchinson, Exec. Sec'y
Dayton Building Trades Council

TH/hh

Houston Gulf Coast Building and Construction Trades Council
2704 SUTHERLAND ST. • 926-4433
HOUSTON, TEXAS 77023

20

July 9, 1975

Senator Harrison A. Williams, Chairman
U. S. Senate
Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Sir:

Since the 1949 decision of the NLRB in the Denver Building Trades case, Building Trades Union has been denied the right to peacefully picket construction job sites in a labor dispute for a period of 60 or more years. Prior to the Denver Building Trades decision, Construction Unions enjoyed the same rights as now accorded other Unions in other industries. Because of rights enjoyed by other segments of Organized Labor and denied to Building Trades Unions, this represents an inequity and is discriminatory.

Presidents Truman, Eisenhower, Kennedy and Johnson all endorsed the principle of Situs Picketing. The Secretaries of Labor of both major political parties have worked actively to secure the enactment of this needed legislation which is important and necessary if Building Trades Unions are to maintain their standard in wages, hours and working conditions.

Mr. Chairman, we respectfully urge prompt and favorable consideration of S 1479 by your committee and will call upon all members of Congress to bring S 1479 to an early vote and passage of this so called Situs Picketing Bill which will restore equal treatment to Building and Construction Trades Craft Unions and their members.

The Houston Gulf Coast Building and Construction Trades Council, Houston, Texas and all affiliated Local Unions pledge their united support of S 1479 to achieve equal treatment and to eliminate inequities. We respectfully request this statement be included in the record including enclosure.

Sincerely,

M. A. Graham

M. A. Graham
Executive Secretary

MAG/plo
opeiu #129
afl-cio
enclosure

Houston Gulf Coast Building and Construction Trades Council
2704 SUTHERLAND ST. • 926-4433
HOUSTON, TEXAS 77023



20

HOUSTON AREA AND VICINITY:

Asbestos Workers L.U. 22, Boilermakers L.U. 74, Bricklayers L.U. 7, Carpenters L.U. 213, Carpenters L.U. 1226, Carpenters L.U. 1334, Carpenters L.U. 1890, Cement Masons L.U. 681, Electrical Workers L.U. 716, Elevator Constructors L.U. 31, Floor Layers L.U. 1863, Glaziers L.U. 1778, Iron Workers L.U. 84, Laborers L.U. 18, Laborers L.U. 313, Lathers L.U. 224, Marble Masons & Tile Setters L.U. 20, Millwrights L.U. 2232, Operating Engineers L.U. 450, Painters L.U. 130, Painters L.U. 945, Pile Drivers L.U. 2079, Pipe Fitters L.U. 211, Plasterers L.U. 79, Plumbers L.U. 68, Roofers L.U. 116, Sheet Metal Workers L.U. 54, Sign and Pictorial Painters L.U. 550, Teamsters L.U. 1111, Tile Setter Helpers L.U. 108.

TEXAS CITY - GALVESTON:

Carpenters L.U. 973, Cement Masons L.U. 177, Iron Workers L.U. 135, Laborers L.U. 116 (Texas City), Laborers L.U. 116 (Galveston), Operating Engineers L.U. 450, Pipe Fitters L.U. 211, Plumbers L.U. 200, Sheet Metal Workers L.U. 144, Teamsters L.U. 1111.

FREEPORT:

Electrical Workers L.U. 716, Laborers L.U. 116, Operating Engineers L.U. 450, Pipe Fitters L.U. 211

BRYAN:

Carpenters L.U. 1855, Iron Workers L.U. 84, Electrical Workers L.U. 716, Laborers L.U. 18, Plumbers L.U. 567.

OTHER ORGANIZATIONS:

Carpenters District Council, Southern Texas Laborers' District Council

Idaho Building & Construction Trades Council

456 North Arthur, Box 1110
Pocatello, Idaho 83201
Phone: 232-4601

July 11, 1975

SENATE COMMITTEE ON
LAB[illegible] /ELFARE
RECEIVED
JUL 15 1975

The Honorable Harrison A. Williams
U.S. Senate
Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Senator Williams:

The Idaho Building and Construction Trades Council adopted the following resolution in favor of Senate Bill 1479, and we would greatly appreciate it being included in the Senate proceedings.

WHEREAS: For many years there has been pending before the United States Congress a Bill to equalize the economic rights of craft and industrial workers that would reverse the Situs Picketing Bill, and

WHEREAS: The Situs Picketing Bill, sometimes referred to as the Denver Building Trades Case, has been a serious handicap to construction unions that represent the working people, and

WHEREAS: A strong commitment was made by the leadership of the House and Senate when Landrum-Griffin was being adopted that they would see to it that the Bill would be brought to both floors of Congress for a vote and this promise has not been fulfilled as yet, and

WHEREAS: The details of the legislative measure have been thoroughly explored by the House and Senate Labor Committees and they have made a favorable report. Also, Presidents Truman, Eisenhower, Kennedy, Johnson, and Nixon all indicated their support of the legislative measures which would have cured the problem, and

WHEREAS: There are adequate safeguards to protect innocent third party employers,

THEREFORE, BE IT RESOLVED: That the Idaho Building & Construction Trades Council go on record as being in full support of S1479.

This Bill is vitally important to the livelihood of our members and your support would be appreciated.

Respectfully yours,

Jon F Walters

Jon F. Walters, Business Representative



International Printing and
Graphic Communications Union
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036
Area Code 202
293-2185

Sol Fishko
President

SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
RECEIVED
JUL 8 1975

July 3, 1975

Senator Harrison A. Williams
U. S. Senate
Committee on Labor and Public Welfare
Room 352 - Russell Office Building
First Street and Constitution Avenue, N. W.
Washington, D. C. 20510

My dear Senator Williams:

The more than 130,000 members of the International Printing and Graphic Communications Union join with the rest of organized labor in support of the Equal Treatment of Craft and Industrial Workers Bill (S1479).

It is our conviction that primary strikes and picketing at construction sites are not secondary boycotts as defined by the National Labor Relations Act.

Further, we firmly believe the rights enjoyed by all other segments of organized labor should not be denied workers in the construction industry.

Only the restoration of equity will enable the building and construction trades unions to fully protect their members from sub-standard conditions under which the unorganized are frequently forced to work.

It is our wish that this letter be made a part of the record at the hearings scheduled by the Committee on Labor and Public Welfare for Wednesday, July 9.

Respectfully yours,

Sol Fishko

SF-dw

President

BUILDING AND CONSTRUCTION TRADES COUNCIL
AFFILIATED WITH
BUILDING AND CONSTRUCTION TRADES DEPARTMENT
A.F.L.-C.I.O.
220 MAIN STREET
LABOR TEMPLE
KLAMATH FALLS, OREGON
July 8, 1975

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
JUL 11 1975
RECEIVED

The Honorable Wm. Harrison
U.S. Senate
Chairman Committee on Labor and Public Welfare
Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Harrison:

At the regular meeting of the Klamath Building Trades July 7, 1975, the delegates from affiliated Locals requested that this council be included in the record of your committee hearings on S 1479 for equal treatment of craft and industrial workers.

We have been and are seriously handicapped in any dispute with Employers. Most of our Building Trades Unions do not have the money or resources in these times to effectively cope with the generally well-financed employer groups.

Passage of this bill will help to rectify some of the inequities of the last 25 years.

All we are struggling for is a living for ourselves and all working people in these United States. With a little help, maybe we can make this happen.

Sincerely yours,

Clarence F. Westlund

Clarence F. Westlund
Secretary

CFW/jy

KANE COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL

MEETINGS HELD FIRST AND THIRD FRIDAYS

326 WEST STATE ST., GENEVA, ILLINOIS

ADDRESS OF WRITER

215 E. Galena Blvd. Aurora, Ill. 60504

July 10 19 75

The Honorable Harrison A. Williams
United States Senate
Committee on Labor and Public Welfare
Washington D. C. 20510

Dear Senator: Re: (S.1479).

The following is a resolution adopted by the Kane County Building and Construction Trades Council. It is the wish of this council that this resolution appear in the record.

WHEREAS: Since the 1949 decision of the National Labor Relations Board in the Denver Building Trades case, Building Trades Unions have been denied the right to peacefully picketing at their employment site as is now accorded unions in other industries in a labor dispute: and

WHEREAS: Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon all indicated their support of the Legislative measures which would have cured this problem: and

WHEREAS: In the past, Legislation has been caught in a stalemate of the legislative process which results too often from the strategic use, misuse, or abuse of power by a small minority in the Senate and House under existing rules and procedures of the Congress: therefore

BE IT RESOLVED: That the Kane County Building and Construction Trades Council do hereby and whole heartedly recommend the passage of H.R. 5900 and S.1479 supporting equal treatment of craft and industrial workers.

Sincerely,
Arlan Vollman
Secretary,
Kane County Building &
Construction Trades Council

SENATE COMMITTEE ON LA
RECEIVED
JUL 15 1975

cc: The Honorable Charles H. Percy
The Honorable Adali E. Stevenson III

Lane - Coos - Curry - Douglas Counties

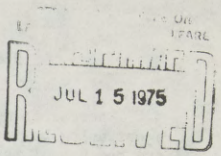
BUILDING AND CONSTRUCTION TRADES COUNCIL

EUGENE, OREGON

AFFILIATED WITH BUILDING AND CONSTRUCTION TRADES DEPARTMENT AMERICAN FEDERATION OF LABOR CONGRESS OF INDUSTRIAL ORGANIZATIONS

2300 OAKMONT WAY
EUGENE, OREGON 97401

July 9, 1975



The Honorable Harrison A. Williams
The United States Senate
Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Sir:

The National Building Trades Department informs me your committee will conduct hearings on S 1479 regarding equal treatment for Craft and Industrial Workers before July 15, 1975.

Enclosed is a copy of the resolution adopted by the Lane, Coos, Curry, Douglas County Building Trades Council June 2, 1975 in support of H.R. 5900.

H.R. 5900 and S 1479 could be classified by the Building Trades to be the most important piece of legislation passed in the last twenty years by Congress. This law would affect thousands of construction workers, as we are now fighting just for survival.

Congress has passed legislation guaranteeing our rights to protect our wages, conditions, and jobs by advertising to the public sub-standard conditions which exist on a job site. Congress also passed legislation requiring all contractors to pay the prevailing wage rate as determined by the Department of Labor on public contracts. (e.g. The Davis Bacon Act)

After Congress passed the above mentioned legislation they passed the amendment to the Taft Hartley Act, Section 14-B. Because of this amendment, the rulings of the National Labor Relations Board and the decisions by the Supreme Court the intent has been twisted around until it is now illegal for a construction trades union to picket job sites in an effort to protect their members wages, conditions and jobs; which they have bargained long and hard across negotiating tables for years to achieve.

I think a good, clean, strong Labor Movement is good for the country and good for the economy. I urge your committee and Congress to pass S 1479 so that we can get on with the business at hand.

The delegates to the Building Trades Council request this letter and the enclosed resolution be read into the record.

Thanking you in advance for your cooperation.

Sincerely,

Doug Dinsmore

Doug Dinsmore
Secretary

DD/slm
Enclosure

Lane - Coos - Curry - Douglas Counties

BUILDING AND CONSTRUCTION TRADES COUNCIL

EUGENE, OREGON

AFFILIATED WITH BUILDING AND CONSTRUCTION TRADES DEPARTMENT AMERICAN FEDERATION OF LABOR CONGRESS OF INDUSTRIAL ORGANIZATIONS

2300 OAKMONT WAY
EUGENE, OREGON 97401

RESOLUTION ADOPTED JUNE 2, 1975

Whereas in most instantces the General Contractor is the agent doing business with subcontractors on a common job site and because of this relationship the general contractor awards contracts to non-union subcontractors which create a threat to our members livelyhood because of the substandard conditions which exists and

Whereas because of the Federal Davis Bacon Act pertaining to public funds on construction projects and

Whereas because of the amendments to the Taft Hartley Act concerning situs picketing which severly restrict the operation of the construction unions because of the unfair and ridiculous manner the act is administered now therefore be it

RESOLVED the Lane, Coos, Curry, Douglas Building and Construction Trades Council go on record this day Monday, June 2, 1975 in support of H.R. 5900 and be it further

RESOLVED the importance of H.R: 5900 be brought to the attention of the Oregon Congressional delegation and urge a YES vote just once for the working man and woman who must pay the tax bill.

Doug Dinsmore
Executive Secretary

LOUISIANA STATE ASSOCIATION OF ELKS I.B.P.O.E.W.

RESOLUTION

WHEREAS, the Louisiana State Association of Elks I.B.P.O.E.W. has taken coguiance of H.R. 5900 in the United States Congress and S.B. 1479 in the United States Senate which restates to the right of organized Labor Unions to picket for better wages and working conditions.

Now be it resolved that we urge the members of the Senate and Congress to work for and vote for these bills.

Passed unanimously by the Louisiana State Association of Elks I.B.P.O.E.W. in session at New Orleans, Louisiana on July 2, 1975

Ernest Montrell Recorder

PAUL J. BURNSKY, *President*

CLAYTON W. BILDERBACK, *Sec'y-Treas*

METAL TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

GENERAL OFFICES: AFL-CIO BLDG., 815 16th STREET, N. W., WASHINGTON, D. C. 20006

TELEPHONE 347-7255



SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
RECEIVED
JUL 15 1975

July 9, 1975

Senator Harrison A. Williams
U. S. Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Dear Senator:

The Metal Trades Department of the AFL-CIO, on behalf of its 22 affiliated international unions, and in accordance with the clear cut position expressed by the AFL-CIO on Equal Treatment of Craft and Industrial Workers, desires to go on record in strong support of S 1479, which would eliminate situs picketing at construction projects from the definition of secondary boycotts in the National Labor Relations Act as amended.

This bill would restore to the Building Trades Unions the same rights enjoyed by other unions in a labor dispute. In this regard, it implements recommendations made by five Presidents of the United States -- President Truman, President Eisenhower, President Kennedy, President Johnson and President Nixon.

The bills now being considered by the Labor Subcommittee would reverse the National Labor Relations Board's early construction of the statute's secondary boycott provisions. It would permit a building trades union to picket a construction project on which a contractor with whom the union has a labor dispute is working, even though employees of other contractors working upon the same job refuse to cross the picket line.

The bills would confer no special benefits on the building trades unions that are not enjoyed by other unions. Instead, they eliminate a hypertechnical statutory construction -- which treats employers working side by side as joint venturers at a construction site as unconcerned and unrelated parties in a lawful labor dispute concerning the wages, hours, and other working conditions at the common site.

The realities of what goes on at a construction site make it clear that the joint venturers or cooperating contractors are not "neutrals", and should have no right to be insulated from traditional, concerted employee activity which is lawful in any other industry.

EXECUTIVE COUNCIL

JOHN H. LYONS ..... *First Vice-President*
HUNTER P. WHARTON ... *Second Vice-President*
WM. E. FREDENBERGER .... *Third Vice-President*
S. FRANK RAFTERY ..... *Fourth Vice-President*
CHARLES H. PILLARD ..... *Fifth Vice-President*
EDWARD J. CARLOUGH ... *Sixth Vice-President*
DRAPER DOYAL ..... *Seventh Vice-President*
HAROLD J. BUOY ..... *Eighth Vice-President*
CHARLES ROMELFANGER .. *Ninth Vice-President*

Metal Trades Department, AFL-CIO

The various contractors operating at a construction site are more akin to the functionally integrated units in an industrial plant than to separate business entities. Artificially treating these various construction-site firms as if they had no relationship to a labor dispute at the site results in an inequitable situation which should finally be corrected by Congress.

We join with the Building and Construction Trades Department of the AFL-CIO and the AFL-CIO Executive Council in strongly urging prompt and favorable action by the Senate Committee on Labor and Public Welfare on this Bill, so that it may be promptly reported and favorably acted upon by Congress to rectify the grievous injustice which has existed for 25 years against building trades workers and their unions in denying them the right to pursue picketing at the site of their employment, which is a right that is accorded to all other labor unions in a labor dispute.

We would like to have this letter made a part of the official record of the hearings being held this date.

Thanking you for your prompt and favorable consideration of S 1479 and with best wishes, I remain

Sincerely,

Paul J. Burnsky
President

PJB:mr

WHEREAS, The Labor Sub-Committee of the Senate Committee on Labor and Public Welfare will commence hearings on S. 1479, Equal Treatment of Craft and Industrial Workers on July 9, 1975, and

WHEREAS, S. 1479 will correct and clarify a technicality in the Taft-Hartley Act, Section 8 (B) (4), and

WHEREAS, This section of the Taft-Hartley Act as interpreted by the National Labor Relations Board in the Denver Building Trades case of 1949 denies the Building Trades Unions the right to peaceful picketing at the employment site, a right that all other unions have under the Act, and

WHEREAS, Five Presidents of the United States of both political parties have endorsed legislation to correct this inequity

THEREFORE BE IT RESOLVED, That the Michigan State Building and Construction Trades Council representing 100,000 construction workers urge the members of the United States Senate to support S. 1479, and

BE IT FURTHER RESOLVED, That Secretary Arnold write a letter to the Michigan Senators asking them to co-sponsor S. 1479.

Respectfully submitted,

The Michigan State Building
and Construction Trades Council

MORRIS COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL
272 Parsippany Road
Parsippany, New Jersey 07054
18

President
GEORGE LAUFENBERG
377-3623

Treasurer
FRANK KELLY
386-0581

RESOLUTION

WHEREAS, S. 1479 is presently under consideration before the Labor subcommittee of the Senate Committee on Labor and Public Welfare beginning Wednesday, July 9, 1975; and

WHEREAS, this proposed legislation, if enacted, will clarify a technicality in the law and correct an unfair restriction placed on unions in the building and construction industry under Section 8 (b) (4) of the Taft-Hartley Act. This provision, as interpreted by the NLRB in a 1949 decision, denies to building trades unions the right to peaceful picketing at the employment site, a right that is accorded to all other labor unions;

NOW, THEREFORE, BE IT RESOLVED that the said Council, representing all members of the Trade Unions of Morris County hereby express their staunch support for the revisions of S. 1479. The Morris County Building Trades Council hereby requests that they receive the same rights accorded to all other unions - that right being to peacefully picket at the employment site.

It is hereby certified that the foregoing is a true copy of a resolution adopted by the Morris County Building Trades Council, 272 Parsippany Road, Parsippany, New Jersey.

Dated: July 7, 1975

George Laufenberg
George Laufenberg
President

NORTHWESTERN INDIANA BUILDING AND CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH THE
BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

G. RUSSELL BASSETT
President

VINCENT J. PANEPINTO
Vice President

ROBERT E. SCHUMANN
Secretary-Treasurer

3714 GRANT STREET
GARY, INDIANA 46408

TELEPHONE
AREA CODE 219
884-6570

RESOLUTION

WHEREAS, a technicality in the law places an unfair restriction on unions in the building and construction industry under Section 8 (b) (4) of the Taft-Hartley Act, and

WHEREAS, this denies to building trades unions the right to peaceful picketing at the employment site, a right that is accorded to all other labor unions, and

WHEREAS, over the last 25 years five Presidents of the United States have endorsed legislation to correct this inequity, also Secretaries of Labor of both political parties have worked actively to secure the enactment of this much-needed legislation, and

WHEREAS, hearings are scheduled to commence before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, pertaining to Equal Treatment of Craft and Industrial Workers (S.1479); now, therefore,

BE IT RESOLVED, that the Northwestern Indiana Building and Construction Trades Council go on record in favor of S.1479, and

BE IT FURTHER RESOLVED, that we urge Senators to co-sponsor and support this important legislation.

Resolved this 8th day of July, 1975.

NORTHWESTERN INDIANA BUILDING AND CONSTRUCTION TRADES COUNCIL

G. Russell Bassett, President

Robert Schumann, Secretary-Treasurer

NORTH CENTRAL BUILDING AND CONSTRUCTION TRADES COUNCIL
AFFILIATED WITH
BUILDING AND CONSTRUCTION TRADES DEPARTMENT AFL-CIO
R.R. #3, BOX 416 B, KOKOMO, INDIANA GLADSTONE 7-1684
CASS, GRANT, HOWARD, HUNTINGTON, MIAMI, TIPTON AND WABASH COUNTIES

PRESIDENT
WILMER GROVES

RECORDING SECRETARY
G.R. KLEIN

FIN. SECRETARY-TREASURER
GENE MARTIN

July 9, 1975

Senator Harrison A. Williams, Jr.
Committee on Labor and Public Welfare
United States Senate
Washington, D. C.

Dear Sir:

This letter will officially inform you of the resolution that has been adopted by the North Central Building Trades Council of Indiana.

The Resolution reads as follows:

"May it be resolved that the North Central Building Trades Council does go on record in support of Senate Bill 1479, Equal Treatment of Craft and Industrial Workers. We urge you and all Senators to support this Bill for the betterment of all Building Trades people in the United States of America."

We wish the above resolution to appear in the record.

Also, Sir, we have been informed that you are already one of the Senators who now support the Bill and we offer our utmost thanks to you.

Respectfully,

G. R. Klein

G. R. Klein, Recording Secretary
North Central Building Trades Council
and
Business Manager, Local Union 873, IBEW

aw

JUL 11 1975

OFFICE & PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
AND CANADIAN LABOUR CONGRESS

HOWARD COUGHLIN
PRESIDENT

WILLIAM A. LOWE
SECRETARY-TREASURER

July 3, 1975

Honorable Harrison A. Williams
Member of Congress
Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Senator Williams:

I have been advised that hearings are scheduled to commence before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare beginning July 9, 1975 on Equal Treatment of Craft and Industrial Workers (S1479).

S1479 will clarify a technicality in the law and correct an unfair restriction placed on building and construction industry unions which denies to those unions the right to peacefully picket at an employment site. It must be obvious to all fairminded persons that the building and construction trade unions are not being given equitable treatment when interpretations of 8(b)(4) of the Taft-Hartley Act deny them a right that is held by members of all other unions.

When the law as interpreted prevents building trade unions from peacefully picketing at an employment site, it, in effect, is abridging the rights of building tradesmen to wage a successful strike. This is inherently wrong in a free society.

The Office & Professional Employees International Union, representing 100,000 workers, urgently petitions your Labor Subcommittee to act favorably on S1479. I am hereby requesting that the contents of my letter appear in the record of the Subcommittee's proceedings.

Very truly yours,

Howard Coughlin
President

HC/mm
opeiu:153
afl-cio

RESOLUTION

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

WHEREAS: For many years there has been pending before the United States Congress a Bill to equalize the economic rights of Craft and Industrial Workers, sometimes known as the Bill to reverse the Denver Building Trades Case or the Situs Picketing Bill, and

WHEREAS: The justification for the adoption of the Bill has been stated by Presidents Truman, Eisenhower, Kennedy, Johnson and Nixon, and

WHEREAS: The above Presidents have all indicated their support of the legislative measures which would have cured the problem, and

WHEREAS: The details of the legislative measure have been thoroughly explored by the House and Senate Labor Committees and they have made favorable reports thereon,

THEREFORE: The Pittsburgh Building & Construction Trades Council urges all local affiliated Craft Unions to go on record in support of H.R. 5900 and urgently request their Congressional Representatives that the legislative process be put into action and that no devices will be permitted to foil the effort to get this bill adopted.

SUBMITTED BY: OFFICERS, PITTSBURGH BUILDING & CONSTRUCTION TRADES COUNCIL

ADOPTED: UNANIMOUSLY - - - - - MAY 14, 1975

SACRAMENTO-SIERRA'S BUILDING AND CONSTRUCTION TRADES COUNCIL
(Sacramento, Yolo, Amador, Placer, El Dorado, Nevada and Sierra Counties)
R. A. CAPLES, *Secretary-Business Manager* • Phone 455-2623 • Labor Center, 2525 Stockton Boulevard • SACRAMENTO, CALIF. 95817

RESOLUTION

WHEREAS: Since the 1949 decision of the National Labor Relations Board in the Denver Building Trades Case, Building Trades Unions have been and are presently being denied the same rights as is accorded other unions in a labor dispute at a construction site, and

WHEREAS: There has been solid legislative history since that time supporting proposals to correct this injustice by reversing the so-called Denver Building Trades rule, and

WHEREAS: Five former Presidents, namely Truman, Eisenhower, Kennedy, Johnson and even Nixon, have all publicly stated and are on official record of supporting corrective legislation, and

WHEREAS: Numerous Senators and Congressmen have also gone on record in support of such legislation including such conservatives as Senator Barry Goldwater of Arizona, and

WHEREAS: Such legislation is again pending before the 94th Congress in the form of H.R. 5900, and

WHEREAS: Hearings are supposedly to begin June 5, 1975.

NOW, THEREFORE, BE IT RESOLVED the Executive Board of the Sacramento-Sierra's Building & Construction Trades Council go on record again of urging the support of Senators Cranston and Tunney, and Congressmen Moss, Johnson, Leggett and McFall, and

BE IT FURTHER RESOLVED that replies be requested as to their support or non-support.

ADOPTED: MAY 29, 1975

Joseph Karan
JOSEPH KARAN, PRESIDENT

R. A. Caples
R. A. CAPLES, SECRETARY

RAC:b
opeu #29 afl-cio

western union **Telegram**

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5122276163 TDBN SAN ANTONIO TX 78 07=09 1049A EST
PMS SENATOR HARRISON A WILLIAMS JR

CAPITOL ONE DC

THE SAN ANTONIO BUILDING AND CONSTRUCTION TRADES COUNCIL ADOPTED A RESOLUTION ON JULY 8 1975, WE CALL UPON CONGRESS TO BRING AN EARLY DEFINITIVE VOTE ON S.1479 INTRODUCED BY SENATOR HARRISON A WILLIAMS (D=N.J.). WE PLEDGE OUR UNITED SUPPORT OF THIS LEGISLATION TO ACHIEVE EQUAL TREATMENT FOR THE BUILDING AND CONSTRUCTION TRADES INDUSTRY, WE WISH OUR RESOLUTION TO APPEAR IN THE RECORD, SINCERELY
A K PAYNE PRESIDENT R L BOUBEL SECRETARY SAN ANTONIO BUILDING AND CONSTRUCTION TRADES COUNCIL 603 NORTH ST MARYS ROOM 104 SAN ANTONIO TX 78205

10:49 EST

MGMPOMT HSA

RECEIVED
JUL 10 1975
Labor and Public Welfare

415 CHAPALA STREET
TELEPHONE: (805) 965-9711
MEETINGS: 1ST WEDNESDAY

BUILDING AND CONSTRUCTION TRADES COUNCIL

OF SANTA BARBARA COUNTY - AFL - CIO
SANTA BARBARA, CALIFORNIA 93101

FIRMIN F. FEUERBORN, SECRETARY

July 3, 1975

The Honorable Harrison A. Williams, Jr.
United States Senate
Washington, D. C., 20510

Dear Senator Williams:

RE: S1479

Speaking for the Santa Barbara Building Trades, I would like to again reiterate our strong feelings for this legislation. We feel that, at the moment, there is no other legislation as important as this.

We would like to advise you that we wish our resolution of 30 May 1975 be considered to appear on the record for the Santa Barbara Building Trades Council.

We have also asked Senator Tunney to join his colleges in co-sponsoring this legislation.

Very truly yours,

Firmin F. Feuerborn

Firmin F. Feuerborn
Executive Secretary

FFF/rc

cc Robert A. Georgine

RECEIVED
JUL 10
Labor and Public Welfare
Committee

SEATTLE BUILDING & CONSTRUCTION TRADES COUNCIL
Chartered by Building and Construction Trades Dept. • A. F. of L.-C. I. O.
Telephone 623-2116
232 Labor Temple • 2800 First Avenue
SEATTLE, WASHINGTON 98121

NEW ADDRESS
2700 First Avenue
Suite 211

[redacted], President
ARTHUR McGRAW

AUSTIN ST. LAURENT, Executive Secretary

July 8, 1975

The Honorable Harrison A. Williams, Jr.
U.S. Senate
Committee on Labor and Public Welfare
Washington, D.C. 20510

Greeting:

The attached letter is self-explanatory. We wish that our endorsement of this legislation and our support of Mr. Robert Georgine's statement be noted in the record.

Sincerely,

Austin St. Laurent, Executive Secretary
SEATTLE BUILDING & CONSTRUCTION
TRADES COUNCIL

AStL:g
opeiu#8 afl-cio
Encl.

cc: Mr. Robert A. Georgine, President
Building & Construction Trades Dept., AFL-CIO

RECEIVED
JUL 10
Labor and Public Welfare
Committee

RECORD

western union Mailgram

UNITED STATES POSTAL SERVICE U.S.MAIL

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HON HARRISON A WILLIAMS JR
SENATE OFFICE BUILDING
WASHINGTON DC 20510

RECEIVED
JUL 17 1975
Labor and Public Welfare

FOR THE PAST 25 YEARS, LEGISLATORS OF BOTH MAJOR POLITICAL PARTIES AND 5 PRESIDENTS HAVE ENDORSED THE PRINCIPLE OF SITUS PICKETING, YET THE CONSTRUCTION WORKER CONTINUES TO BE DENIED THE RIGHT TO PEACEFUL PICKET.

IT IS TIME FOR LEGISLATIVE DELIBERATIONS TO COME TO AN END. IT IS TIME FOR THE RHETORIC OF PRESIDENTS, SENATORS AND CONGRESS TO BE TRANSLATED INTO ACTION. IT IS TIME FOR THE PASSAGE OF S. 1479.

THIS BILL WILL CLARIFY A TECHNICALITY IN THE LAW AND CORRECT AN UNFAIR RESTRICTION PLACED ON CONSTRUCTION TRADE UNDER SECTION 8(B) (4)B OF THE TAFT-HARTLEY ACT.

THIS PROVISION AS INTERPRETED BY THE NLRB IN A 1949 DECISION DENIES BUILDING TRADESMEN THE RIGHT TO PEACEFUL PICKETING AT THE EMPLOYMENT SITE.

WE REQUEST YOU CO-SPONSOR S. 1479 AS AN INDICATION OF YOUR SUPPORT OF THIS LEGISLATION.

WE URGE THAT YOU VOTE FOR THIS BILL WHICH WILL ASSURE EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS.

RESPECTFULLY YOURS,

JUL 17 11 00 AM '75

EDWARD J. CARLOUGH
GENERAL PRESIDENT
SHEET METAL WORKERS INTERNATIONAL
1750 N.Y. AVE., N.W.
WASH D. C. 20006
18:40 EST

MGMWSHT HSA

RESOLUTION

WHEREAS prior to 1951, craft unions had a legal right to protect their wages, hours, and working conditions by picketing common situs job sites where subcontractor employers attempted to work employees at depressed wages and working conditions; and,

WHEREAS in 1951 the United States Supreme Court sustained that the holding of the National Labor Relations Board that the Taft Hartley Act made illegal peaceful picketing whose object was to sustain the wages, hours and working conditions or union employees; and,

WHEREAS the National Labor Relations Board with the concurrence of the courts have allowed industrial unions the right to protect their wages, hours and working conditions by the picketing of subcontractors; and,

WHEREAS such a disparity and injustice has for over twenty-five years caused unrest, discord and bad labor relations in the construction industry; and,

WHEREAS countless dollars and man days of emplyment have been lost as a result of the injustice thrust upon the craft unions.

THEREFORE BE IT RESOLVED that the Southeast Louisiana Building and Construction Trades Council urges support and passage of S.1479, a Bill which would eradicate the disparity and injustice set out above; and,

BE IT FURTHER RESOLVED that copies of this Resolution be forwarded to interested parties including the Senators and Representatives of Louisiana.

BUILDING AND CONSTRUCTION TRADES COUNCIL
IN AFFILIATION WITH
BUILDING AND CONSTRUCTION TRADES DEPARTMENT
AMERICAN FEDERATION OF LABOR—CONGRESS OF INDUSTRIAL ORGANIZATIONS

Address of Writer 1108 E. Wilson St. Streator, Illinois 61364

A RESOLUTION

Whereas - The Honorable Frank Thompson (D.NJ) has introduced H.R.5900 in the House of Representatives and

Whereas - The Honorable Harrison Williams (D.NJ) has introduced companion Legislation, S.1479 in the Senate, and

Whereas both of these Bills would repeal Section 8(B)(4) of the Taft-Hartley Act, and

Whereas - For the past 25 years five Presidents of The United States, have supported similar Bills in both Houses of Congress, and

Whereas - We feel this is Unfair Class Legislation designed to cripple the Building & Construction Trades Industry, therefore

Be It Resolved - The Streator, Illinois Building & Construction Trades Council heartily endorses both of these Bills and urge the Congress of The United States to pass this Legislation, and

Be It Further Resolved - That copies of this resolution adopted by the Streator Building Trades Council at its meeting June 3rd, 1975 be sent to it's Representatives in Congress.

Mike Ryan

Mike Ryan, Sec.-Treas.
Streator Bldg. Trades Council
1108 E. Wilson St.
Streator, Illinois

MGMWSHT HSB
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ICS IPMBNGZ CSP
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ZIP

western union Mailgram

UNITED STATES POSTAL SERVICE U.S. MAIL

SENATOR HARRISON WILLIAMS
SENATE OFFICE BLDG
WASHINGTON DC 20510

A RESOLUTION WHEREAS THE HONORABLE F THOMPSON DEMOCRAT OF NEW JERSEY HAS INTRODUCED HOUSE RESOLUTION 5900 IN THE HOUSE OF REPESENTATIVES AND WHEREAS THE HONORABLE HARRISON WILLIAMS DEMOCRAT FROM NEW JERSEY HAS INTRODUCTED COMPANION LEGISLATION SENATE RESOLUTION 1479 IN THE SENATE AND WHEREAS BOTH OF THESE BILLS WOULD REPEAL SECTION 8 (B)(4) OF THE TAFT-HARTLY ACT AND WHEREAS FOR THE PAST 25 YEARS FIVE PRESIDENTS OF THE UNITED STATES HAVE SUPPORTED SIMILAR BILLS IN BOTH HOUSES OF CONGRESS AND WHEREAS WE FEEL THIS IS UNFAIR CLASS LEGISLATION DESIGNED TO CRIPPLE THE BUILDING AND CONSTRUCTION TRADES INDUSTRY THEREFORE BE IT RESOLVED THE STREATOR ILLINOIS LABORERS LOCAL NUMBER 82 HEARTILY ENDORSES BOTH OF THESE BILLS AND URGES THE CONGRESS OF THE UNITED STATES TO PASS THIS LEGISLATION AND BE IT FURTHER RESOLVED THAT COPIES OF THIS RESOLUTION ADOPTED BY THE STREATOR LABORERS LOCAL NUMBER 82 AT ITS MEETING JULY 7 1975 BE SENT TO ITS REPRESENTATIVES IN CONGRESS

TOM HIGGINS, RECORDING SECRETARY
STREATOR LABORERS LOCAL NUMBER 82
601 1/2 EAST MAIN STREET
STREATOR ILLINOIS

20:03 EST

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RECEIVED JUL 14 1975

RWDSU

MAX GREENBERG *President*
ALVIN E. HEAPS *Secretary-Treasurer*

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION 101 WEST 31 ST., N. Y., N. Y. 10001 212-947-9303

July 10, 1975

JUL 11 1975

Hon. Harrison A. Williams
U. S. Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Dear Senator Williams:

I have been advised that hearings are scheduled to commence before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare on Equal Treatment of Craft and Industrial Workers (S1479).

I am a member of the Executive Council of the AFL-CIO and I participated in the meeting of the Council on May 7, 1975 which unanimously adopted the enclosed policy statement.

It is high time that the Congress eliminated the unfair restrictions placed on unions in the building and construction industry under Section 8 (b) (4) of the Taft-Hartley Act. These restrictions discriminate against a very substantial and important section of the American labor movement.

I would appreciate it if this letter indicating our International Union's support of S. 1479 is included in the record of the proceedings of the subcommittee.

Sincerely yours,

Max Greenberg

Max Greenberg
President

MG:lm

POLICY STATEMENT
ADOPTED MAY 6, 1975
BY THE
EXECUTIVE COUNCIL
OF THE
AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS
ON

EQUAL TREATMENT OF CRAFT AND INDUSTRIAL WORKERS

It is time the Congress enacted what four Presidents from both political parties have long recognized as just -- the so-called Situs Picketing Bill.

Presidents Truman, Eisenhower, Kennedy and Johnson all endorsed the principle of situs picketing, which would, as the present legislation states, "protect the economic rights of labor in the building and construction industry by providing for equal treatment of craft and industrial unions".

Therefore, we call upon the Congress to bring to an early, definitive vote H.R. 5900, introduced by Representative Frank Thompson (D-N. J.), and S. 1479, introduced by Senator Harrison Williams (D-N. J.). We pledge our united support of this legislation to achieve equal treatment for the building and construction trades industry.

57-527 O - 75 - 28

United Mine Workers of America

TELEPHONE
AREA CODE 202-638-0530

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N.W.
Washington, D.C.
20005

July 23, 1975

Dear ~~Congressman~~

The UMWA would like to join the many other labor unions in endorsing HR.5900. In view of the muddled judicial history of situs picketing I believe this bill will help alleviate the confusion and uncertainty which now exists in the construction industry in regard to picketing. Due to the unique nature of the construction industry, namely the practice of contracting and subcontracting on common sites, a special clarification of their picketing rights is necessary.

The unions representing various construction trades are at an obvious disadvantage compared to other unions. They may not prevent their employer from bringing non-union help onto the job site in the form of a subcontractor. In most other industries, if an employer brought non-union help to the job site to do work which union members could perform the union would be able to shut down the job site in protest and thus protect their members' jobs. This is not the case in the construction industry where picketing to shut down an entire site is unlawful if there are other subcontractors at the site. HR. 5900 seeks to reinterpret the meaning of "job site", innocent neutrals", and "wholly unconcerned persons" in a manner which more realistically reflects the true situation.

With its passage, HR. 5900 would allow construction trade unions to utilize the same strategies available to other industrial unions. They would be able to better protect their members' jobs. If there is a labor dispute, a union's only recourse is the pressure it may exert by closing down the site and forcing the employer to negotiate in good faith. For years the construction trade unions have been without this recourse due to situs picketing limitations. HR. 5900 seeks to give to them what other unions have had all along.

I urge your favorable vote on HR. 5900.

Sincerely,

Robert Nelson, Director
Legislative Department

RN:fw

UNITED PAPERWORKERS INTERNATIONAL UNION
International Headquarters: 163-03 Horace Harding Expressway, Flushing, New York 11365
Telephone: 212-762-6000

JOSEPH P. TONELLI
President

July 7, 1975

Honorable Harrison A. Williams
Chairman
U.S. Senate
Committee on Labor and Public Welfare
Washington, D.C. 20510

Dear Sir:

On behalf of our 300,000 members, I am writing you to seek your active support on behalf of Bill S1479. It is my understanding that the hearings are scheduled to commence before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare on Wednesday, July 9.

The proposed legislation is now a quarter of a century late. It does not seem possible that so long a period of time could elapse and still not have this constructive proposed legislation enacted into law.

The record is replete. It is long and profuse, setting forth the unfair treatment that Building Trades Unions have endured under the unfair restrictions placed on them by Section VIII(b) (4) of the NLRB in the 1949 decision denying Building Trades Unions the right to peaceable picketing at the employment site, a right that my union is accorded and has enjoyed since the founding of this union at the turn of the century.

This legislation is particularly significant at this time. This legislation is essential if the Building and Construction Trades are to maintain their standards of wages, hours and other conditions of employment against the substantially lower standards of non-union contracters.

It is not my intention to review the economic picture in the country at this time; suffice it to say, the depression that the Construction Trades finds itself into today, mandates that this legislation be enacted into law.

The union picket line is labor's life line. I make no apology for that. It is a weapon that I hope will be seldom used but should be unhampered, uninhibited if the needs of working people are to be met and unions are to remain viable and to flourish in a free society.

I believe that a majority of the members in the House and the Senate recognize the importance of giving equal treatment to craft workers in the matter of peaceful picketing. Further, I believe the members of your Committee are convinced of the logic and of the fairness of this legislation. It is my hope that you will use your good office, your influence and your persuasiveness to ensure that this Bill becomes law in this session of the Congress.

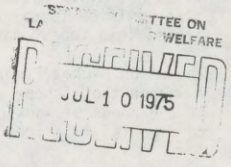
If this communication is timely, I would appreciate having it appear in the record.

Best wishes.

Sincerely yours,

Joseph P. Tonelli

JPT:lh
opeiu:153



AFFILIATED WITH THE STATE BUILDING TRADES COUNCIL OF CALIFORNIA AND THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

Building and Construction Trades Council
Of Marin County

701 Mission Avenue Phone 453-6746
SAN RAFAEL, CALIFORNIA
11

October 1, 1975

SENATOR WILLIAMS N.J.
OCT 4 10 00 AM '75

Honorable Senator Harrison A. Williams
U.S.Senate
Committee on Labor and Public Welfare
Washington, D. C. 20510

Dear Senator Williams:

In behalf of the members and officers of this Council we are submitting a resolution in support of Senate Bill 1479, and request that our statement appear in the record.

We feel, Senate Bill 1479, (Situs Picketing Bill), would provide for equal treatment of Craft and Industrial Workers. Any support you may give to assure the passage of this bill will be appreciated.

I remain,

Very truly yours,

N.C.Green, President

George G. Goodfellow, Secretary

DEPARTMENT OF LABOR
RECEIVED
OCT 6 1975

NCG/cj
ope 3 afl cio

encl

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
RECEIVED
OCT 6 1975

AFFILIATED WITH THE STATE BUILDING TRADES COUNCIL OF CALIFORNIA AND THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

Building and Construction Trades Council
Of Marin County

701 MISSION AVENUE PHONE 453-6746
SAN RAFAEL, CALIFORNIA
11

May 30, 1975

RESOLUTION

WHEREAS, The National Labor Relation Act was enacted to provide fair and equitable relationship between Management and Labor; and

WHEREAS, The Act further was enacted to take differences from the violence of the streets to the calmer area of the Bargaining Table; and

WHEREAS, Certain portions of the Act have been interpreted to allow Union and Non Union employees to work side by side; and

WHEREAS, This condition has not proved to be in the best interest of either non union or union elements; and

WHEREAS, The primary goals of non-violence and cool head negotiating are not being attained through the Act as it is presently written and interpreted.

THEN BE IT HEREBY RESOLVED, the Marin Building and Construction Trades Council calls upon the Congress of the United States to enact such legislation that will enable the harmonious relationship between Labor and Management, that was the original intention of the Act; and

BE IT FURTHER RESOLVED, to amend Section 14B, of the Taft Hartley Act to enable the determination of a Plant or Job site to be either Union or Non Union; and

BE IT FURTHER RESOLVED, that House Resolution No. 5900, (Frank Thompson,Jr.) does correct the inequities herein described.

AND BE IT FINALLY RESOLVED, the Marin Building and Construction Trades Council call upon all Labor organized and unorganized to URGE Congress to support HR 5900.

BUILDING AND CONSTRUCTION TRADES COUNCIL OF MARIN COUNTY

N. C. Green

N. C. Green, President

Geo. Goodfellow

George Goodfellow, Secty

GG/cj
ope 3 afl cio

NORTHWESTERN INDIANA BUILDING AND CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH THE
BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

G. RUSSELL BASSETT
President

VINCENT J. PANEPINTO
Vice President

ROBERT E. SCHUMANN
Secretary-Treasurer

3714 GRANT STREET
GARY, INDIANA 46408

TELEPHONE
AREA CODE 219
884-6570

RESOLUTION

WHEREAS, a technicality in the law places an unfair restriction on unions in the building and construction industry under Section 8 (b) (4) of the Taft-Hartley Act, and

WHEREAS, this denies to building trades unions the right to peaceful picketing at the employment site, a right that is accorded to all other labor unions, and

WHEREAS, over the last 25 years five Presidents of the United States have endorsed legislation to correct this inequity, also Secretaries of Labor of both political parties have worked actively to secure the enactment of this much-needed legislation, and

WHEREAS, hearings are scheduled to commence before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, pertaining to Equal Treatment of Craft and Industrial Workers (S.1479); now, therefore,

BE IT RESOLVED, that the Northwestern Indiana Building and Construction Trades Council go on record in favor of S.1479, and

BE IT FURTHER RESOLVED, that we urge Senators to co-sponsor and support this important legislation.

Resolved this 8th day of July, 1975.

NORTHWESTERN INDIANA BUILDING AND CONSTRUCTION TRADES COUNCIL

G. Russell Bassett, President

Robert Schumann, Secretary-Treasurer

Transport Workers Union of America

Affiliated with American Federation of Labor and Congress of Industrial Organizations

LEGISLATIVE DEPARTMENT

100 INDIANA AVE., N. W. WASHINGTON, D. C. 20001 District 7-7407

INT'L HDQRS., 1980 BROADWAY, NEW YORK, N. Y. 10023 873-6000

MICHAEL J. QUILL
International President
1934 - 1966

MATTHEW GUINAN
International President

DOUGLAS L. MAC MAHON
Int'l Secretary-Treasurer

JAMES F. HORST
Int'l Executive Vice President

WILLIAM G. LINDNER
Int'l Vice President
Director, Air Transport Division

ERNEST MITCHELL
Int'l Vice President
COPE Director

FRANCIS A. O'CONNELL
Int'l Executive Council
Legislative Director

July 15, 1975

The Honorable Harrison A. Williams
Chairman, United States
Senate Committee on Labor and
Public Welfare
Washington, D. C. 20510

Dear Mr. Chairman:

The Transport Workers Union of America, AFL-CIO, would like to take this opportunity to express its' wholehearted support for the enactment of S. 1479. This legislation which is currently pending before your Committee seeks to protect economic rights by providing equal treatment for both craft and industrial unions.

TWU is an industrial union representing more than 150,000 members in mass transit, airlines, railroads, utilities and other allied industries.

The equalization of treatment between construction unions and industrial unions is the end to which the AFL-CIO Building and Construction Trades Department is looking towards in regard to S. 1479.

The Transport Workers Union, which has been a forerunner in the movement for equal treatment for all citizens of this country, respectfully urges your Committee to favorably report this legislation at the earliest possible date. Thirty years of waiting with all of the subsequent delays and frustrations is enough. We implore you to act upon this bill without further delay.

Thanking you for your favorable consideration of our request, I am,

Sincerely yours,

Matthew Guinan

Matthew Guinan
International President

MG/jm
OPEIU-153-AFL-CIO

APPENDIX C

Recruitment and Training Program
New York, New York
June 7, 1975

The Honorable Harrison A. Williams, Jr.
Chairman
Labor and Public Welfare Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I'm writing to offer my unqualified support for S.1479, the bill to extend equal rights to craft and industrial workers.

For many years, the minority workers of the United States have sought equal entry into craft employment. This entry has been sought for pride of accomplishment, but also because training and employment in the skilled trades has offered significant economic advancement to those who have for too many years struggled at the bottom of the economic ladder.

While this goal has not been completely achieved, substantial and significant progress has been made.

It would be tragic indeed, if these economic advantages were to be lost when the goal is at hand.

S. 1479 would grant construction workers the right to peacefully picket to maintain their economic advances. It is worth noting, that S. 1479 offers complete and adequate protection against any picketing or other activity that would encourage or promote racial discrimination or exclusion.

It is my considered conclusion, that the rights of black American construction workers,as well as white, are best preserved through union membership and collective bargaining. And further, that they deserve the same right to peacefully protest and to protect their economic advances at a construction site as do garment workers and other industrial workers in the United States.

Sincerely,

Bayard Rustin
Chairman
R-T-P Board of Directors

[From the United States LAW WEEK, June 3, 1975]

No. 73–1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 2, 1975]

Syllabus

Respondent union, representing the plumbing and mechanical trades in Dallas, was a party to a multiemployer collective-bargaining agreement with a mechanical contractors association. The agreement contained a "most favored nation" clause, by which the union agreed that if it granted a more favorable contract to any other employer it would extend the same terms to all association members. Respondent picketed petitioner, a general building contractor which subcontracted all plumbing and mechanical work and had no employees respondent wished to represent, to secure a contract whereby petitioner agreed to subcontract such work only to firms that had a current contract with respondent. Petitioner signed under protest and, claiming that the agreement violated §§ 1 and 2 of the Sherman Act and state antitrust laws, brought suit against respondent seeking declaratory and injunctive relief. By the time this case went to trial, respondent had secured identical agreements from other general contractors and was selectively picketing those who resisted. The District Court held (1) that the subcontracting agreement was exempt from federal antitrust laws because it was authorized by the first proviso in § 8 (e) of the National Labor Relations Act (NLRA), which exempts jobsite contracting agreements in the construction industry from the statutory ban on secondary agreements requiring employers to cease doing business with other persons, and (2) that federal labor legislation pre-empted the State's antitrust laws. The Court of Appeals affirmed. *Held:*

1. Respondent union's agreement with petitioner is not entitled to the nonstatutory exemption from the federal antitrust laws recognized in *Meat Cutters* v. *Jewel Tea Co.*, 381 U. S. 676, because it imposed direct restraints on competition among subcontractors that would not have resulted from the elimination of competition based on differences in wages and working conditions.

(a) The agreement indiscriminately excluded nonunion subcontractors from a portion of the market, even if their competitive advantages were derived from efficient operating methods rather than substandard wages and working conditions.

(b) The "most-favored nation" clause in the multiemployer bargaining agreement, by insuring that no union subcontractor would have a competitive advantage on any matters covered by the agreement, gave respondent's agreements with petitioner and other general contractors the effect of creating a sheltered market for union subcontractors in that portion of the subcontracting market controlled by signatory general contractors.

(c) Since the agreement did not simply prohibit subcontracting to any nonunion firm but to any firm that did not have a contract with respondent, it gave the union complete control over subcontract work offered by general contractors that had signed the agreement and empowered the union to exclude certain subcontractors from that portion of the market by refusing to deal with them.

2. The first proviso to § 8 (e) of the NLRA does not shelter the challenged agreement from the federal antitrust laws, since that proviso was not intended to authorize subcontracting agreements that are neither within the context of a collective-bargaining relationship nor limited to any particular jobsite. Here respondent, which has never sought to represent petitioner's employees or bargain with petitioner on their behalf, makes no claim to be protecting those employees from working with nonunion men; the agreement was not limited to any particular jobsite; and respondent concededly sought the agreement solely as a means of pressuring Dallas mechanical subcontractors to recognize it as their employees' representative.

3. There is no indication that Congress in the Taft-Hartley amendments or later meant to make NLRA remedies for "hot-cargo" agreements exclusive, thus precluding liability for such agreements under the antitrust acts.

4. The agreement is not subject to the state antitrust laws, the use of which to regulate union activities in aid of union organization would risk substantial conflict with policies central to federal labor law.

5. Whether the subcontracting agreement violated the Sherman Act, an issue not fully briefed or argued in this Court, must be decided on remand.

438 F. 2d 1154, reversed in part and remanded.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, BLACKMUN, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion. STEWART, J., filed a dissenting opinion, in which DOUGLAS, BRENNAN, and MARSHALL, JJ., joined.

MR. JUSTICE POWELL delivered the opinion of the Court.

The building trades union in this case supported its efforts to organize mechanical subcontractors by picketing certain general contractors, including Petitioner. The union's sole objective was to compel the general contractors to agree that in letting subcontracts for mechanical work they would deal only with firms that were parties to the union's current collective-bargaining agreement. The union disclaimed any interest in representing the general contractors' employees. In this case the picketing succeeded, and Petitioner seeks to annul the resulting agreement as an illegal restraint on competition under federal and state law. The union claims immunity from federal antitrust statutes and argues that federal labor regulation pre-empts state law.

I

Local 100 is the bargaining representative for workers in the plumbing and mechanical trades in Dallas. When this litigation began, it was party to a multiemployer bargaining agreement with the Mechanical Contractors Association of Dallas, a group of about 75 mechanical contractors. That contract contained a "most favored nation" clause, by which the union agreed that if it granted a more favorable contract to any other employer it would extend the same terms to all members of the Association.

Connell Construction Company is a general building contractor in Dallas. It obtains jobs by competitive bidding and subcontracts all plumbing and mechanical work. Connell has followed a policy of awarding these subcontracts on the basis of competitive bids, and it has done business with both union and nonunion subcontractors. Connell's employees are represented by various building trade unions. Local 100 has never sought to represent them or to bargain with Connell on their behalf.

In November 1970, Local 100 asked Connell to agree that it would subcontract mechanical work only to firms that had a current contract with the union. It demanded that Connell sign the following agreement:

> "WHEREAS, the contractor and the union are engaged in the construction industry, and
>
> "WHEREAS, the contractor and the union desire to make an agreement applying in the event of subcontracting in accordance with Section 8 (e) of the Labor-Management Relations Act;
>
> "WHEREAS, it is understood that by this agreement the contractor does not grant, nor does the union seek, recognition as the collective bargaining representative of any employees of the signatory contractor; and
>
> "WHEREAS, it is further understood that the subcontracting limitation provided herein applies only to mechanical work which the contractor does not perform with his own employees but uniformly subcontracts to other firms;
>
> "THEREFORE, the contractor and the union mutually agree with respect to work falling within the scope of this agreement that is to be done at the site of the construction, alteration, painting or repair of any building, structure, or other works, that if the contractor should contract or subcontract any of the aforesaid work falling within the normal trade jurisdiction of the union, said contractor shall contract or subcontract such work only to firms that are parties to an executed, current, collective bargaining agreement with Local Union 100 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry."

When Connell refused to sign this agreement, Local 100 stationed a single picket at one of Connell's major construction sites. About 150 workers walked off the job,

and construction halted. Connell filed suit in state court to enjoin the picketing as a violation of Texas antitrust laws. Local 100 removed the case to federal court. Connell then signed the subcontracting agreement under protest. It amended its complaint to claim that the agreement violated §§ 1 and 2 of the Sherman Act, 15 U. S. C. §§ 1, 2, and was therefore invalid. Connell sought a declaration to this effect and an injunction against any further efforts to force it to sign such an agreement.

By the time the case went to trial, Local 100 had submitted identical agreements to a number of other general contractors in Dallas. Five others had signed, and the union was waging a selective picketing campaign against those who resisted.

The District Court held that the subcontracting agreement was exempt from federal antitrust laws because it was authorized by the construction industry proviso to § 8 (e) of the National Labor Relations Act, 29 U. S. C. § 158 (e). The court also held that federal labor legislation pre-empted the State's antitrust laws. 78 L. R. R. M. 3012 (ND Tex. 1971). The Court of Appeals for the Fifth Circuit affirmed, 483 F. 2d 1154 (CA5 1973), with one judge dissenting. It held that Local 100's goal of organizing nonunion subcontractors was a legitimate union interest and that its efforts toward that goal were therefore exempt from federal antitrust laws. On the second issue, it held that state law was pre-empted under *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959). We granted certiorari on Connell's petition. 416 U. S. 981. We reverse on the question of federal antitrust immunity and affirm the ruling on state law pre-emption.

II

The basic sources of organized labor's exemption from federal antitrust laws are §§ 6 and 20 of the Clayton Act, 15 U. S. C. § 17 and 29 U. S. C. § 52, and the Norris-LaGuardia Act, 29 U. S. C. §§ 104, 105, and 113. These statutes declare that labor unions are not combinations or conspiracies in restraint of trade, and exempt specific union activities, including secondary picketing and boycotts, from the operation of the antitrust laws. See *United States* v. *Hutcheson*, 312 U. S. 219 (1941). They do not exempt concerted action or agreements between unions and nonlabor parties. *UMW* v. *Pennington*, 381 U. S. 657, 662 (1965). The Court has recognized, however, that a proper accommodation between the congressional policy favoring collective bargaining under the NLRA and the congressional policy favoring free competition in business markets requires that some union-employer agreements be accorded a limited nonstatutory exemption from antitrust sanctions. *Meat Cutters Local 189* v. *Jewel Tea Co.*, 381 U. S. 676 (1965).

The nonstatutory exemption has its source in the strong labor policy favoring the association of employees to eliminate competition over wages and working conditions. Union success in organizing workers and standardizing wages ultimately will affect price competition among employers, but the goals of federal labor law never could be achieved if this effect on business competition were held a violation of the antitrust laws. The Court therefore has acknowledged that labor policy requires tolerance for the lessening of business competition based on differences in wages and working conditions. See *UMW* v. *Pennington*, *supra*, at 666; *Jewel Tea*, *supra*, at 692–693 (opinion of MR. JUSTICE WHITE). Labor policy clearly does not require, however, that a union have freedom to impose direct restraints on competition among those who employ its members. Thus, while the statutory exemption allows unions to accomplish some restraints by acting unilaterally, *e. g.*, *American Federation of Musicians* v. *Carroll*, 391 U. S. 99 (1968), the nonstatutory exemption offers no similar protection when a union and a nonlabor party agree to restrain competition in a business market. See *Allen Bradley Co.* v. *IBEW Local 3*, 325 U. S. 797, 806–811 (1945); Cox, Labor and the Antitrust Laws—A Preliminary Analysis, 104 U. Pa. L. Rev. 252 (1955); Meltzer, Labor Unions, Collective Bargaining, and the Antitrust Laws, 32 U. Chi. L. Rev. 659 (1965).

In this case Local 100 used direct restraints on the business market to support its organizing campaign. The agreements with Connell and other general contractors indiscriminately excluded nonunion subcontractors from a portion of the market, even if their competitive advantages were not derived from substandard wages and working conditions but rather from more efficient operating methods. Curtailment of competition based on efficiency is neither a goal of federal labor policy nor a necessary effect of the elimination of competition among workers. Moreover, competition based on efficiency is a positive value that the antitrust laws strive to protect.

The multiemployer bargaining agreement between Local 100 and the Association, though not challenged in this suit, is relevant in determining the effect that the agreement between Local 100 and Connell would have on the business market. The "most favored nation" clause in the multiemployer agreement promised to eliminate competition between members of the Association and any other subcontractors that Local 100 might organize. By giving members of the Association a contractual right to insist on terms as favorable as those given any competitor, it guaranteed that the union would make no agreement that would give an unaffiliated contractor a competitive advantage over members of the Association.[1] Subcontractors in the Association thus

[1] The primary effect of the agreement seems to have been to inhibit the union from offering any other employer a more favorable contract. When asked at trial whether another subcontractor could get an agreement on any different terms, Local 100's business agent answered:

"No. The agreement says that no one will be given a more favorable agreement. I couldn't, if I desired, as an agent, sign an agreement other than the ones in existence between the local contractors and the Local 100.

. . . . .

stood to benefit from any extension of Local 100's organization, but the method Local 100 chose also had the effect of sheltering them from outside competition in that portion of the market covered by subcontracting agreements between general contractors and Local 100. In that portion of the market, the restriction on subcontracting would eliminate competition on all subjects covered by the multiemployer agreement, even on subjects unrelated to wages, hours and working conditions.

Success in exacting agreements from general contractors would also give Local 100 power to control access to the market for mechanical subcontracting work. The agreements with general contractors did not simply prohibit subcontracting to any nonunion firm; they prohibited subcontracting to any firm that did not have a contract with Local 100. The union thus had complete control over subcontract work offered by general contractors that had signed these agreements. Such control could result in significant adverse effects on the market and on consumers, effects unrelated to the union's legitimate goals of organizing workers and standardizing working conditions. For example, if the union thought the interests of its members would be served by having fewer subcontractors competing for the available work, it could refuse to sign collective-bargaining agreements with marginal firms. Cf. *UMW* v. *Pennington, supra.* Or, since Local 100 has a well-defined geographical jurisdiction, it could exclude "travelling" subcontractors by refusing to deal with them. Local 100 thus might be able to create a geographical enclave for local contractors, similar to the closed market in *Allen Bradley, supra.*

This record contains no evidence that the union's goal was anything other than organizing as many subcontractors as possible.[2] This goal was legal, even though a successful organizing campaign ultimately would reduce the competition that unionized employers face from nonunion firms. But the methods the union chose are not immune from antitrust sanctions simply because the goal is legal. Here Local 100, by agreement with several contractors, made nonunion subcontractors ineligible to compete for a portion of the available work. This kind of direct restraint on the business market has substantial anticompetitive effects, both actual and potential, that would not follow naturally from the elimination of competition over wages and working conditions. It contravenes antitrust policies to a degree not justified by congressional labor policy, and therefore cannot claim a nonstatutory exemption from the antitrust laws.

There can be no argument in this case, whatever its force in other contexts, that a restraint of this magnitude might be entitled to an antitrust exemption if it were included in a lawful collective-bargaining agreement. Cf. *UMW* v. *Pennington, supra,* at 664–665; *Jewel Tea, supra,* at 689–690 (opinion of MR. JUSTICE WHITE); *id.*, at 709–713, 732–733 (opinion of Mr. Justice Goldberg). In this case, Local 100 had no interest in representing Connell's employees. The federal policy favoring collective bargaining therefore can offer no shelter for the union's coercive action against Connell or its campaign to exclude nonunion firms from the subcontracting market.

III

Local 100 nonetheless contends that the kind of agreement it obtained from Connell is explicitly allowed by the construction industry proviso to § 8 (e) and that antitrust policy therefore must defer to the NLRA. The majority in the Court of Appeals declined to decide this issue, holding that it was subject to the "exclusive jurisdiction" of the NLRB. 483 F. 2d, at 1174. This Court has held, however, that the federal courts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies, including the antitrust laws.[3] We conclude that § 8 (e) does not allow this type of agreement.

Local 100's argument is straightforward: the first proviso to § 8 (e) allows "an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure or other work."[4] Local 100 is a labor organization, Connell is an

---

"Q. I see. So that's—in other words, once you sign that contract with the Mechanical Contractors' Association, that sets the only type of agreement which your Union can enter into with any other mechanical contractors; is that correct, sir?

"A. That is true." Tr. 45–46.

[2] There was no evidence that Local 100's organizing campaign was connected with any agreement with members of the multiemployer bargaining unit, and the only evidence of agreement among those subcontractors was the "most favored nation" clause in the collective-bargaining agreement. In fact, Connell has not argued the case on a theory of conspiracy between the union and unionized subcontractors. It has simply relied on the multiemployer agreement as a factor enhancing the restraint of trade implicit in the subcontracting agreement it signed.

[3] *Jewel Tea, supra,* at 684–688 (opinion of MR. JUSTICE WHITE); *id.*, at 710 n. 18 (opinion of Mr. Justice Goldberg); cf. *Vaca* v. *Sipes,* 386 U. S. 171, 176–188 (1967); *Smith* v. *Evening News Assn.,* 371 U. S. 195 (1962).

[4] Section 8 (e) provides:

"It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dea'ing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceible and void: *Provided,* That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection and subsection (b)(4)(B) of this section the term 'any employer,' 'any person engaged in commerce or an industry affecting commerce,' and 'any person,' when used in relation to the terms 'any other producer, processor, or manufacturer,' 'any other employer,' or 'any other person' shall not include

employer in the construction industry, and the agreement covers only work "to be done at the site of construction, alteration, painting or repair of any building, structure, or other works." Therefore, Local 100 says, the agreement comes within the proviso. Connell responds by arguing that despite the unqualified language of the proviso, Congress intended only to allow subcontracting agreements within the context of a collective-bargaining relationship; that is, Congress did not intend to permit a union to approach a "stranger" contractor and obtain a binding agreement not to deal with nonunion subcontractors. On its face, the proviso suggests no such limitation. This Court has held, however, that § 8 (e) must be interpreted in light of the statutory setting and the circumstances surrounding its enactment:

> "It is a 'familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.' *Holy Trinity Church* v. *United States*, 143 U. S. 457, 459." *National Woodwork Manufacturers Assn.* v. *NLRB*, 386 U. S. 612, 619 (1967).

Section 8 (e) was part of a legislative program designed to plug technical loopholes in § 8 (b)(4)'s general prohibition of secondary activities. In § 8 (e) Congress broadly proscribed using contractual agreements to achieve the economic coercion prohibited by § 8 (b)(4). See *National Woodwork Manufacturers Assn., supra*, at 634. The provisos exempting the construction and garment industries were added by the Conference Committee in an apparent compromise between the House Bill, which prohibited all hot-cargo agreements, and the Senate Bill, which prohibited them only in the trucking industry.[5] Although the garment industry proviso was supported by detailed explanations in both Houses,[6] the construction industry proviso was explained only by bare references to "the pattern of collective bargaining" in the industry.[7] It seems, however, to have been adopted as a partial substitute for an attempt to overrule this Court's decision in *NLRB* v. *Denver Building & Construction Trades Council*, 341 U. S. 675 (1951).[8] Discussion of "special problems" in the construction industry, applicable to both the § 8 (e) proviso and the attempt to overrule *Denver Building Trades*, focused on the problems of picketing a single nonunion subcontractor on a multiemployer building project, and the close relationship between contractors and subcontractors at the jobsite.[9] Congress limited the construction industry proviso to that single situation, allowing subcontracting agreements only in relation to work done on a jobsite. In contrast to the latitude it provided in the garment industry proviso, Congress did not afford construction unions an exemption from § 8 (b)(4)(B) or otherwise indicate that they were free to use subcontracting agreements as a broad organizational weapon. In keeping with these limitations, the Court has interpreted the construction industry proviso as

> "a measure designed to allow agreements pertaining to certain secondary activities on the construction site because of the close community of interests there, but to ban secondary-objective agreements concerning nonjobsite work, in which respect the construction industry is no different from any other." *National Woodwork Manufacturers Assn., supra*, at 638–639 (footnote omitted).

Other courts have suggested that it serves an even narrower function:

> "[T]he purpose of the section 8 (e) proviso was to alleviate the frictions that may arise when union men work continuously alongside nonunion men on the

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persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception."

[5] See H. R. Rep. No. 1147, 86th Cong., 1st Sess., 39–40 (1959).

[6] 105 Cong. Rec. 17327 (1959 (remarks by Sen. Kennedy); *id.*, at 17381 (remarks by Sens. Javits and Goldwater); *id.*, at 15539 (memorandum by Reps. Thompson and Udall); *id.*, at 16590 (memorandum by Sen. Kennedy and Rep. Thompson). These debates are reproduced in 2 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 1377, 1385, 1576, and 1708 (1959).

[7] 105 Cong. Rec. 17899 (1959) (remarks by Sen. Kennedy); *id.*, at 18134 (remarks by Rep. Thompson); 2 Legislative History of LMRDA, *supra*, at 1432, 1721.

[8] President Eisenhower's message to Congress recommending labor reform legislation urged amendment of the secondary boycott provisions to permit secondary activity "under certain circumstances, against secondary employers engaged in work at a *common construction site* with the primary employer." S. Doc. No. 10, 86th Cong., 1st Sess., at 3 (1959) (italics added). Various bills introduced in both Houses included such provisions, see 2 Legis. Hist. of LMRDA, *supra*, at 1912–1915, but neither the bill that passed the Senate nor the one that passed the House contained a *Denver Building Trades* provision. The Conference Committee proposed to include such an amendment to § 8 (b)(4)(B) in the Conference agreement, along with a closely linked construction-industry exemption from § 8 (e). 105 Cong. Rec. 17333 (1959) (proposed Senate resolution), 2 Legis. Hist. of LMRDA, *supra*, at 1383. But a parliamentary obstacle killed the § 8 (b)(4)(B) amendment, and only the § 8 (e) proviso survived. See 105 Cong. Rec. 17728–17729; 17901–17903; 2 Legis. Hist. of LMRDA, *supra*, at 1397–1398, 1434–1436. References to the proviso suggest that the Committee may have intended the § 8 (e) proviso simply to preserve the status quo under *Carpenters Local 1976* v. *NLRB* (*Sand Door*), 357 U. S. 93 (1958), pending action on the *Denver Building Trades* problem in the following session. See H. R. Rep. No. 1147, *supra*, at 39–40; 105 Cong. Rec. 17900 (1959) (report of Sen. Kennedy on Conference agreement); 2 Legis. Hist. of LMRDA, *supra*, at 1433. Although Senator Kennedy introduced a bill to amend § 8 (b)(4), S. 2643, 86th Cong., 1st Sess. (1959), it was never reported out of committee.

[9] See 105 Cong. Rec. 17881 (1959) (remarks by Sen. Morse); *id.*, at 15541 (memorandum by Reps. Thompson and Udall); *id.*, at 15551–15552 (memorandum by Sen. Elliott); *id.*, at 15852 (remarks by Rep. Hoffman); *id.*, at 20004–20005 (remarks by Rep. Kearns); 2 Legis. Hist. of LMRDA, *supra*, at 1425, 1577, 1588, 1684, and 1861.

same construction site." *Drivers Local 695* v. *NLRB*, — U. S. App. D. C. —, 361 F. 2d 547, 553 (1966).

See also *Denver Building Trades, supra*, at 692–693 (MR. JUSTICE DOUGLAS, dissenting); *Essex County & Vicinity District Council of Carpenters* v. *NLRB*, 332 F. 2d 636, 640 (CA3 1964).

Local 100 does not suggest that its subcontracting agreement is related to any of these policies. It does not claim to be protecting Connell's employees from having to work alongside nonunion men. The agreement apparently was not designed to protect Local 100's members in that regard, since it was not limited to jobsites on which they were working. Moreover, the subcontracting restriction applied only to the work Local 100's members would perform themselves and allowed free subcontracting of all other work, thus leaving open a possibility that they would be employed alongside nonunion subcontractors. Nor was Local 100 trying to organize a nonunion subcontractor on the building project it picketed. The union admits that it sought the agreement solely as a way of pressuring mechanical subcontractors in the Dallas area to recognize it as the representative of their employees.

If we agreed with Local 100 that the construction industry proviso authorizes subcontracting agreements with "stranger" contractors, not limited to any particular jobsite, our ruling would give construction unions an almost unlimited organizational weapon.[10] The unions would be free to enlist any general contractor to bring economic pressure on nonunion subcontractors, as long as the agreement recited that it only covered work to be performed on some jobsite somewhere. The proviso's jobsite restriction then would serve only to prohibit agreements relating to subcontractors that deliver their work complete to the jobsite.

It is highly improbable that Congress intended such a result. One of the major aims of the 1959 Act was to limit "top-down" organizing campaigns, in which unions used economic weapons to force recognition from an employer regardless of the wishes of his employees.[11] Congress accomplished this goal by enacting § 8 (b)(7), which restricts primary recognitional picketing, and by further tightening § 8 (b)(4)(B), which prohibits the use of most secondary tactics in organizational campaigns. Construction unions are fully covered by these sections. The only special consideration given them in organizational campaigns is § 8 (f), which allows "prehire" agreements in the construction industry, but only under careful safeguards preserving workers' rights to decline union representation. The legislative history accompanying § 8 (f) also suggests that Congress may not have intended that strikes or picketing could be used to extract prehire agreements from unwilling employers.[12]

These careful limits on the economic pressure unions may use in aid of their organizational campaigns would be undermined seriously if the proviso to § 8 (e) were construed to allow unions to seek subcontracting agreements, at large, from any general contractor vulnerable to picketing. Absent a clear indication that Congress intended to leave such a glaring loophole in its restrictions on "top-down" organizing, we are unwilling to read the construction industry proviso as broadly as Local 100 suggests.[13] Instead, we think its authorization extends only to agreements in the context of collective-bargaining relationships and, in light of congressional references to the *Denver Building Trades* problem, possibly to common-situs relationships on particular jobsites as well.[14]

Finally, Local 100 contends that even if the subcontracting agreement is not sanctioned by the construction industry proviso and therefore is illegal under § 8 (e), it cannot be the basis for antitrust liability because the remedies in the NLRA are exclusive. This argument is

[10] Local 100 contends, unsoundly we think, that the NLRB has decided this issue in its favor. It cites *Los Angeles Building & Construction Trades Council (B & J Investment Co.)*, 214 N. L. R. B. No. 86, 87 L. R. R. M. 1424 (1974), and a memorandum from the General Counsel explaining his decision not to file unfair labor practice charges in a similar case, *Plumbers Local 100 (Hagler Construction Co.)*, No. 16–CC–447 (May 1, 1974). In *B & J Investment* the Board approved, without comment, an administrative law judge's conclusion that the § 8 (e) proviso authorized a subcontracting agreement between the Council and a general contractor who used none of his own employees in the particular construction project. The agreement in question may have been a prehire contract under § 8 (f), and it is not clear that the contractor argued that it was invalid for lack of a collective-bargaining relationship. The General Counsel's memorandum in *Hagler Construction* is plainly addressed to a different argument—that a subcontracting clause should be allowed only if there is a *pre-existing* collective-bargaining relationship with the general contractor or if the general contractor has employees who perform the kind of work covered by the agreement.

[11] 105 Cong. Rec. 6428–6429 (1959) (remarks of Sen. Goldwater); *id.*, at 6648–6649 (remarks of Sen. McClellan); *id.*, at 6664–6665 (remarks of Sen. Goldwater); *id.*, at 14348 (memorandum of Rep. Griffin); 2 Legis. Hist. of LMRDA, *supra*, at 1079, 1175–1176, 1191–1192, 1523.

[12] H. R. Rep. No. 1147, 86th Cong., 1st Sess., 42 (1959); 105 Cong. Rec. 10104 (1959) (memorandum of Sen. Goldwater); *id.*, at 18128 (remarks by Rep. Barden); 2 Legis. Hist. of LMRDA, *supra*, at 1289, 1715. The NLRB has taken this view. *Operating Engineers Local 542*, 142 N. L. R. B. 1132 (1963), enforced, 331 F. 2d 99 (CA3), cert. denied, 379 U. S. 889 (1964).

[13] As noted above, *ante*, at 10–12, the garment industry proviso reflects different considerations. The text of the proviso and the treatment in congressional debates and reports suggest that Congress intended to authorize garment workers' unions to continue using subcontracting agreements as an organizational weapon. See *Danielson* v. *ILGWU Joint Board*, 494 F. 2d 1230 (CA2 1974) (Friendly, J.).

[14] Connell also has argued that the subcontracting agreement was subject to antitrust sanctions because the construction industry proviso authorizes only voluntary agreements. The foundation of this argument is a contention that § 8 (b)(4)(B) forbids picketing to secure an otherwise lawful "hot-cargo" agreement in the construction industry. Because we hold that the agreement in this case is outside the § 8 (e) proviso, it is unnecessary to consider this alternate contention.

grounded in the legislative history of the 1947 Taft-Hartley amendments. Congress rejected attempts to regulate secondary activities by repealing the antitrust exemptions in the Clayton and Norris-LaGuardia Acts, and created special remedies under the labor law instead.[15] It made secondary activities unfair labor practices under § 8 (b) (4), and drafted special provisions for preliminary injunctions at the suit of the NLRB and for recovery of actual damages in the district courts. Sections 10 (*l*), 303; 29 U. S. C. §§ 160 (*l*), 187. But whatever significance this legislative choice has for antitrust suits based on those secondary activities prohibited by § 8 (b) (4), it has no relevance to the question whether Congress meant to preclude antitrust suits based on the "hot-cargo" agreements that it outlawed in 1959. There is no legislative history in the 1959 Congress suggesting that labor-law remedies for § 8 (e) violations were intended to be exclusive, or that Congress thought allowing antitrust remedies in cases like the present one would be inconsistent with the remedial scheme of the NLRA.[16]

We therefore hold that this agreement, which is outside the context of a collective-bargaining relationship and not restricted to a particular jobsite, but which nonetheless obligates Connell to subcontract work only to firms that have a contract with Local 100, may be the basis of a federal antitrust suit because it has a potential for restraining competition in the business market in ways that would not follow naturally from elimination of competition over wages and working conditions.

IV

Although we hold that the union's agreement with Connell is subject to the federal antitrust laws, it does not follow that state antitrust law may apply as well. The Court has held repeatedly that federal law pre-empts state remedies that interfere with federal labor policy or with specific provisions of the NLRA. *E. g., Amalgamated Association of Street Employees* v. *Lockridge*, 403 U. S. 274 (1971); *Teamsters Local 20* v. *Morton*, 377 U. S. 252 (1964); *Teamsters Local 24* v. *Oliver*, 358 U. S. 283 (1959).[17] The use of state antitrust law to regulate union activities in aid of organization must also be pre-empted because it creates a substantial risk of conflict with policies central to federal labor law.

In this area, the accommodation between federal labor and antitrust policy is delicate. Congress and this Court have carefully tailored the antitrust statutes to avoid conflict with the labor policy favoring lawful employee organization, not only by delineating exemptions from antitrust coverage but also by adjusting the scope of the antitrust remedies themselves. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469 (1940). State antitrust laws generally have not been subjected to this process of accommodation. If they take account of labor goals at all, they may represent a totally different balance between labor and antitrust policies.[18] Permitting state antitrust law to operate in this field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

Because employee organization is central to federal labor policy and regulation of organizational procedures is comprehensive, federal law does not admit the use of state antitrust law to regulate union activity that is closely related to organizational goals. Of course, other agreements between unions and nonlabor parties may yet be subject to state antitrust laws. See *Teamsters Local 24* v. *Oliver*, *supra*, at 295–297. The governing factor is the risk of conflict with the NLRA or with federal labor policy.

V

Neither the District Court nor the Court of Appeals decided whether the agreement between Local 100 and Connell, if subject to the antitrust laws, would consti-

[15] See H. R. Rep. No. 510, 80th Cong., 1st Sess., at 65–67 (1947); 93 Cong. Rec. 4757, 4770, 4834–4874 (debates over Sen. Ball's proposal for antitrust sanctions and Sen. Taft's compromise proposal for actual damages, which became § 303 of the NLRA).

[16] The dissenting opinion of MR. JUSTICE STEWART argues that § 303 provides the exclusive remedy for violations of § 8 (e), thereby precluding recourse to antitrust remedies. For that proposition the dissenting opinion relies upon "considerable evidence in the legislative materials." *Post*, at 12. In our view, these materials are unpersuasive. In the first place, Congress did not amend § 303 expressly to provide a remedy for violations of § 8 (e). See Labor-Management Reporting and Disclosure Act of 1959, Pub. L. No. 86-257, § 704 (d), (e), 73 Stat. 544–545. The House in 1959 did reject proposals by Representatives Hiestand, Alger, and Hoffman to repeal labor's antitrust immunity. *Post*, at 14–17. Those proposals, however, were much broader than the issue in this case. The Hiestand-Alger proposal would have repealed antitrust immunity for any action in concert by two or more labor organizations. The Hoffman proposal apparently intended to repeal labor's antitrust immunity entirely. That the Congress rejected these extravagant proposals hardly furnishes proof that it intended to extend labor's antitrust immunity to include agreements with nonlabor parties, or that it thought antitrust liability under the existing statutes would be inconsistent with the NLRA. The bill introduced by Senator McClellan two years later provides even less support for that proposition. Like most bills introduced in Congress, it never reached a vote.

[17] In most cases a decision that state law is pre-empted leaves the parties with recourse only to the federal labor law, as enforced by the NLRB. See *Lockridge*, *supra*; *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236 (1959). But in cases like this one, where there is an independent federal remedy that is consistent with the NLRA, the parties may have a choice of federal remedies. Cf. *Vaca* v. *Sipes*, 386 U. S. 171, 176–188 (1967); *Smith* v. *Evening News Assn.*, 371 U. S. 195 (1962).

[18] Texas law is a good example. Tex. Rev. Civ. Stat. Ann. Arts. 5152 and 5153 declare that it is lawful for workers to associate in unions and to induce other persons to accept or reject employment. Article 5154, however, referring to the preceding articles, provides: "Nothing herein shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies." The Texas antitrust statutes prohibit, among other specified agreements, trusts, and monopolies, any combination of two or more persons to restrict "the free pursuit of a lawful business." Tex. Bus. & Comm. Code §§ 15.02–15.04.

tute an agreement that restrains trade within the meaning of the Sherman Act. The issue was not briefed and argued fully in this Court. Accordingly, we remand for consideration whether the agreement violated the Sherman Act.[19]

Reversed in part and remanded.

MR. JUSTICE DOUGLAS, dissenting.

While I join the opinion of MR. JUSTICE STEWART, I write to emphasize what is, for me, the determinative feature of the case. Throughout this litigation, Connell has maintained only that Local 100 coerced it into signing the subcontracting agreement. With the complaint so drawn, I have no difficulty in concluding that the union's conduct is regulated solely by the labor laws. The question of antitrust immunity would be far different, however, if it were alleged that Local 100 had conspired with mechanical subcontractors to force nonunion subcontractors from the market by entering into exclusionary agreements with general contractors like Connell. An arrangement of that character was condemned in *Allen Bradley Co.* v. *Local 3, IBEW*, 325 U. S.797, which held that Congress did not intend "to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act," *id.*, at 810. Were such a conspiracy alleged, the multiemployer bargaining agreement between Local 100 and the mechanical subcontractors would unquestionably be relevant. See *United Mine Workers* v. *Pennington*, 381 U. S. 657, 673 (concurring opinion); *Meat Cutters* v. *Jewel Tea Co.*, 381 U. S. 676, 737 (dissenting opinion). But since Connell has never alleged or attempted to show any conspiracy between Local 100 and the subcontractors, I agree that Connell's remedies, if any, are provided exclusively by the labor laws.

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join, dissenting.

As part of its effort to organize mechanical contractors in the Dallas area, the respondent Local Union No. 100 engaged in peaceful picketing to induce the petitioner Connell Construction Co., a general contractor in the building and construction industry, to agree to subcontract plumbing and mechanical work at the construction site only to firms that had signed a collective-bargaining agreement with Local 100. None of Connell's own employees were members of Local 100, and the subcontracting agreement contained the Union's express disavowal of any intent to organize or represent them. The picketing at Connell's construction site was therefore secondary activity, subject to detailed and comprehensive regulation pursuant to § 8 (b)(4) of the National Labor Relations Act, 29 U. S. C. § 158 (b)(4), and § 303 of the Labor Management Relations Act, 29 U. S. C. § 187. Similarly, the subcontracting agreement under which Connell agreed to cease doing business with nonunion mechanical contractors is governed by the provisions of § 8 (e) of the National Labor Relations Act, 29 U. S. C. § 158 (e). The relevant legislative history unmistakably demonstrates that in regulating secondary activity and "hot cargo" agreements in 1947 and 1959, Congress selected with great care the sanctions to be imposed if proscribed union activity should occur. In so doing, Congress rejected efforts to give private parties injured by union activity such as that engaged in by Local 100 the right to seek relief under federal antitrust laws. Accordingly, I would affirm the judgment before us.

I

For a period of 15 years, from passage of the Norris-LaGuardia Act, 47 Stat. 70, in 1932[1] until enactment of the Labor Management Relations Act (the Taft-Hartley Act), 61 Stat. 136, in 1947, union economic pressure directed against a neutral, secondary employer was not subject to sanctions under either federal labor law or antitrust law, at least in the absence of proof that the union was coercing the secondary employer in furtherance of a conspiracy with a nonlabor group. See *United States* v. *Hutcheson*, 312 U. S. 219; *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797. "Congress abolished, for purposes of labor immunity, the distinction between the 'immediate disputants' and secondary activity in which the employer disputants and the members of the union do not stand 'in the proximate relation of employer and employee . . . .'" *National Woodwork Manufacturers Assn.* v. *NLRB*, 386 U. S. 612, 623.

In *Hunt* v. *Crumboch*, 325 U. S. 821, for example, the Court found that union conduct in forcing a freight carrier out of business was protected activity beyond the

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[19] In addition to seeking a declaratory judgment that the agreement with Local 100 violated the antitrust laws, Connell sought a permanent injunction against further picketing to coerce execution of the contract in litigation. Connell obtained a temporary restraining order against the picketing on January 21, 1971, and thereafter executed the contract—under protest—with Local 100 on March 28, 1971. So far as the record in this case reveals, there has been no further picketing at Connell's construction sites. Accordingly, there is no occasion for us to consider whether the Norris-LaGuardia Act forbids such an injunction where the specific agreement sought by the union is illegal, or to determine whether, within the meaning of the Norris-LaGuardia Act, there was a "labor dispute" between these parties. If the Norris-LaGuardia Act were applicable to this picketing, injunctive relief would not be available under the antitrust laws. See *United States* v. *Hutcheson*, 312 U. S. 219 (1941). If the agreement in question is held on remand to be

[1] Before 1932 this Court had held that secondary strikes and boycotts were not exempt from the coverage of the antitrust laws. *E. g., Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assn.*, 274 U. S. 37. *Duplex* and its progeny were overruled by Congress with passage of the Norris-LaGuardia Act, 47 Stat. 70. See *Milk Wagon Drivers' Local*

reach of the federal antitrust laws even though it involved secondary pressure that culminated in the union compelling the carrier's principal patron to break its contract with the carrier and to discharge the carrier from further service. "That which Congress has recognized as lawful," the Court noted, "this Court has no constitutional power to declare unlawful by arguing that Congress has accorded too much power to labor organizations." *Id.*, at 825 n. 8.

Congressional concern over labor abuses of the broad immunity granted by the Norris-LaGuardia Act was one of the considerations that resulted in passage of the Taft-Hartley Act in 1947, which, among other things, prohibited specified union secondary activity. See *National Woodwork Manufacturers Assn.* v. *NLRB*, *supra*, at 623. The central thrust of that statutory provision was to forbid "a union to induce employees to strike against or to refuse to handle goods for their employer when an object is to force him or another person to cease doing business with some third party." *Carpenters Local 1976* v. *NLRB*, 357 U. S. 93, 98.[2] In condemning "specific union conduct directed to specific objectives," *ibid.*, however, Congress deliberately chose not to subject unions engaging in prohibited secondary activity to the sanctions of the antitrust laws.

Section 12 (a) (3) of the Hartley Bill, H. R. 3020, 80th Cong., 1st Sess., as initially passed by the House, defined "unlawful concerted activities" to include an "illegal boycott." I Legislative History of the Labor Management Relations Act, 1947 (hereinafter 1947 Leg. Hist.), at 205. Section 12 (c) provided that the Norris-LaGuardia Act should have no "application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful." *Id.*, at 206–207. The Committee on Education and Labor explained in its report on the Hartley Bill that

> "[i]llegal boycotts take many forms. . . . Sometimes they are direct restraints of trade, designed to compel people against whom they are engaged in to place their business with some other than those they are dealing with at the time. . . . Under [section 12], these practices are called by their correct name, 'unlawful concerted activities.' It is provided that any person injured in his person, property, or business by an unlawful concerted activity affecting commerce may sue the person or persons responsible for the injury in any district court having jurisdiction of the parties and recover damages. The bill makes inapplicable in such suits the Norris-LaGuardia Act, which heretofore has protected parties to industrial strife from the consequences of their lawlessness, no matter how violent their disputes became. Persons who engage in unlawful concerted activities are subject to losing their rights and privileges under the act." H. R. Rep. No. 245, 80th Cong., 1st Sess., pp. 24, 44; I 1947 Leg. Hist. 315, 335.

The Senate, however, refused to adopt the House's removal of antitrust immunity for prohibited secondary activity, choosing instead to make the remedies available under federal labor law exclusive. The Senate Committee on Labor and Public Welfare approved S. 1126, 80th Cong., 1st Sess., which provided that proscribed secondary conduct would be an unfair labor practice and could be enjoined on application of the National Labor Relations Board. No private remedy for an injured employer was authorized in the bill approved by the Committee. See S. Rep. No. 105, 80th Cong., 1st Sess., pp. 7–8, 22; I 1947 Leg. Hist. 413–414, 428.

Four members of the Senate Committee, although supporting the provisions of S. 1126 as reported by the Committee, felt that a number of the provisions of the bill could be stronger. S. Rep. No. 105, 80th Cong., 1st Sess., p. 50, I 1947 Leg. Hist. 456. In particular, the minority Senators proposed

> "[a]n amendment reinserting in the bill a section making secondary boycotts and jurisdictional strikes unlawful and providing for direct suits in the courts by the injured party. . . . The amendment proposes that [the injured party] be entitled to file a suit for damages and obtain a temporary injunction while that suit is being heard. . . . The amendment, furthermore, removes the protection of the Clayton Act from monopoly agreements to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions on the purchase, sale, or use of material, machines, or equipment. While the existence of the union should not be a combination in restraint of trade, we see no reason why unions should not be subject in this field to the same restriction as are competing employers." S. Rep. No. 105, 80th Cong., 1st Sess., pp. 54–55; I 1947 Leg. Hist. 460–461.

Senator Ball, one of the four minority Senators on the Labor and Public Welfare Committee did in fact offer an amendment on the Senate floor that was "designed to correct the interpretation of the Norris-LaGuardia and Clayton acts made by the Supreme Court in the Hutchinson [*sic*] case and a number of other cases brought by former Assistant Attorney General Thurman Arnold, when he attempted to break up monopolistic practices on the part of labor unions, sometimes acting on their own, sometimes in conspiracy with employers." 93 Cong. Rec.

[2] The Act added § 8 (b) (4) to the National Labor Relations Act, making it an unfair labor practice for a labor organization or its agents "to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . ." 61 Stat. 141.

4838; II 1947 Leg. Hist. 1354.[3]

Although stating that he personally agreed with the changes proposed by Senator Ball, Senator Taft argued for defeat of the Ball amendment, explaining that resistance to providing a private injunctive remedy in cases of secondary boycotts was so strong that an attempt to eliminate the labor exemption from the antitrust laws would lead to the defeat of any effort to provide for a private damage remedy for injured parties. Senator Taft proposed as a substitute that private parties be given only the right to sue for actual damages. 93 Cong. Rec. 4843–4844; II 1947 Leg. Hist. 1365. The Ball amendment was thereafter defeated, 93 Cong. Rec. 4847, II 1947 Leg. Hist. 1369–1370, and Senator Taft introduced his proposal "to restore to people who lose something because of boycotts and jurisdictional strikes the money which they have lost." 93 Cong. Rec. 4858; II 1947 Leg. Hist. 1370–1371.

In response to Senator Morse's claim that the proposal would impose virtually unlimited liability on unions, Senator Taft made plain that he was not advocating the use of antitrust sanctions against prohibited secondary activity. "Under the Sherman Act the same question of boycott damage is subject to a suit for [treble] damages and attorneys' fees. In this case we simply provide for the amount of actual damages." 93 Cong. Rec. 4872–4873; II 1947 Leg. Hist. 1398; see *Local 20, Teamsters* v. *Morton*, 377 U. S. 252, 260 n. 16. Senator Taft's proposal for a private damage remedy under federal labor law was adopted by the Senate. 93 Cong. Rec. 4874–4875; II 1947 Leg. Hist. 1399–1400.

In Conference, the House members agreed to eliminate the provisions of the Hartley Bill which, like the Ball amendment, provided that the Norris-LaGuardia Act should have no application to private suits for unlawful secondary activity. See H. R. Conf. Rep. No. 510 on H. R. 3020, 80th Cong., 1st Sess., pp. 58–59, I 1947 Leg. Hist. 562–563. With only "clarifying changes," H. R. Conf. Rep. No. 510, *supra*, at 67; I 1947 Leg. Hist. 571, the House-Senate conferees and then both Houses of Congress agreed to regulate union secondary activity by making specified activity unfair labor practices under § 8 (b)(4) of the National Labor Relations Act, authorizing the Board to seek injunctions against such activity, 29 U. S. C. § 160 (*l*), and providing for recovery of actual damages in a suit by a private party under Senator Taft's compromise proposal, which became § 303 of the Labor Management Relations Act, 29 U. S. C. § 187.[4] Congress in 1947 did not prohibit all secondary activity by labor unions, see *Carpenters Local 1976* v. *NLRB*, 357 U. S. 93; and those practices which it did outlaw were to be remedied only by seeking relief from the Board or by pursuing the newly created, exclusive federal damage remedy provided by § 303. *Local 20, Teamsters* v. *Morton*, 377 U. S. 252.

II

Contrary to the assertion in the Court's opinion, *ante*, at pp. 16–17, the deliberate congressional decision to make § 303 the exclusive private remedy for unlawful secondary activity is clearly relevant to the question of Local 100's antitrust liability in the case before us. The Court is correct, of course, in noting that § 8 (e)'s prohibition of "hot cargo" agreements was not added to the Act until 1959, and that § 303 was not then amended to cover § 8 (e) violations standing alone. But as part of the 1959 amendments designed to close "technical loopholes" perceived in the Taft-Hartley Act, Congress amended § 8 (b)(4) to make it an unfair labor practice for a labor organization to threaten or coerce a neutral employer, either directly or through his employees, where an object of the secondary pressure is to force the employer to enter into an agreement prohibited by § 8 (e).[5] At the same time, Congress expanded the scope of the § 303 damage remedy to allow recovery of the actual damages sustained as a result of a union engaging in secondary activity to force an employer to sign an agreement in violation

[3] The amendment introduced by Senator Ball provided in part that the Clayton Act and the Norris-LaGuardia Act "shall not be applicable in respect of violations of subsection (a) [defining prohibited secondary conduct], or in respect of any contract, combination, or conspiracy, in restraint of commerce, to which a labor organization is a party, if one of the purposes of such contract, combination, or conspiracy is to fix prices, allocate customers, restrict production, distribution, or competition, or impose restrictions or conditions upon the purchase, sale or use of any material, machines, or equipment." 93 Cong. Rec. 4757; II 1947 Leg. Hist. 1324.

[4] Section 303 of the Labor Management Relations Act of 1947, 61 Stat. 158–159, provided

"(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

. . . . . .

"(b) Whoever shall be injured in his business or property by reason o[f] any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

[5] Section 8 (b)(4) of the National Labor Relations Act, as amended by the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 542–543, now provides in part that it shall be an unfair labor practice for a labor organization or its agents:

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8 (e) . . . ."

of § 8 (e).[6] In short, Congress has provided an employer like Connell with a fully effective private damage remedy for the allegedly unlawful union conduct involved in this case.

The essence of Connell's complaint is that it was coerced by Local 100's picketing into "conspiring" with the union by signing an agreement that limited its ability to subcontract mechanical work on a competitive basis.[7] If, as the Court today holds, the subcontracting agreement is not within the construction industry proviso to § 8 (e), then Local 100's picketing to induce Connell to sign the agreement constituted a § 8 (b) (4) unfair labor practice, and was therefore also unlawful under § 303 (a), 29 U. S. C. § 187 (a).[8] Accordingly, Connell has the right to sue Local 100 for damages sustained as a result of Local 100's unlawful secondary activity pursuant to § 303 (b), 29 U. S. C. § 187 (b). Although "limited to actual, compensatory damages," *Local 20, Teamsters* v. *Morton*, 377 U. S., at 260, Connell would be entitled under § 303 to recover all damages to its business that resulted from the union's coercive conduct, including any provable damage caused by Connell's inability to subcontract mechanical work to nonunion firms. Similarly, any nonunion mechanical contractor who believes his business has been harmed by Local 100 having coerced Connell into signing the subcontracting agreement is entitled to sue the union for compensatory damages; for § 303 broadly grants its damage action to "[w]hoever shall be injured in his business or property" by reason of a labor organization engaging in a § 8 (b) (4) unfair labor practice.[9]

Moreover, there is considerable evidence in the legislative materials indicating that in expanding the scope of § 303 to include a remedy for secondary pressure designed to force an employer to sign an illegal "hot cargo" clause and in restricting the remedies for violation of § 8 (e) itself to those available from the Board, Congress in 1959 made the same deliberate choice to exclude antitrust remedies as was made by the 1947 Congress.

While the House was considering labor reform legislation in the summer of 1959, specific proposals were made to apply the antitrust laws to labor unions. Representative Hiestand of California introduced a bill, H. R. 8003, 86th Cong., 1st Sess., which "would solve many of the problems attending unbridled union power as it exists and operates in this country. My proposal is in the nature of antitrust legislation, applied to labor unions." 105 Cong. Rec. 12135; II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter 1959 Leg. Hist.), at 1507. Represent-

---

[6] Section 303, as amended by the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 545, now provides:

"(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8 (b) (4) of the National Labor Relations Act, as amended.

"(b) Whoever shall be injured in his business or property by reason o[f] any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jusisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit."

[7] Indeed, Connell's original state court complaint was filed before Connell had signed any agreement with Local 100. See *ante*, at 3. At that point it was apparent that the primary reason for the lawsuit was Connell's request for an injunction to stop the union's picketing.

[8] If, contrary to the Court's conclusion, see *ante*, at 9–16, Congress intended what it said in the proviso to § 8 (e), then the subcontracting agreement is valid and, under the view of the Board and those courts of appeals that have considered the question, Local 100's picketing to obtain the agreement would also be lawful. See, *e. g.*, *Orange Belt District Council of Painters* v. *NLRB*, 117 U. S. App. D. C. 233, 328 F. 2d 534, 537; *Construction Laborers Local 383* v. *NLRB*, 323 F. 2d 422 (CA9); *Northeastern Indiana Bldg. Trades Council*, 148 N. L. R. B. 854, enforcement denied on other grounds, 122 U. S. App. D. C. 220, 352 F. 2d 696. Connell would therefore have neither a remedy under § 303 nor one with the Board.

It would seem necessarily to follow that conduct specifically authorized by Congress in the National Labor Relations Act could not by itself be the basis for federal antitrust liability, unless the Court intends to return to the era when the judiciary frustrated congressional design by determining for itself "what public policy in regard to the industrial struggle demands." *Duplex Printing Press Co.* v. *Deering*, 245 U. S. 443, 485 (Brandeis, J., dissenting). See *United States* v. *Hutcheson*, 312 U. S. 219. In my view, however, even if Local 100's conduct was unlawful, Connell may not seek to invoke the sanctions of the antitrust laws. Accordingly, I find it unnecessary to decide in this case whether the subcontracting agreement entered into by Connell and Local 100 is within the ambit of the construction industry proviso to § 8 (e), and if it is, whether it was permissible for Local 100 to utilize peaceful picketing to induce Connell to sign the agreement.

[9] If Connell and Local 100 had entered into a purely voluntary "hot cargo" agreement in violation of § 8 (e), an injured nonunion mechanical subcontractor would have no § 303 remedy because the union would not have engaged in any § 8 (b) (4) unfair labor practice. The subcontractor, however, would still be able to seek the full range of Board remedies available for a § 8 (e) unfair labor practice. Moreover, if Connell had truly agreed to limit its subcontracting without any coercion whatsoever on the part of Local 100, the affected subcontractor might well have a valid antitrust claim on the ground that Local 100 and Connell were engaged in the type of conspiracy aimed at third parties with which this Court dealt in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U. S. 797. At the very least, an antitrust suit by an injured subcontractor under circumstances in which Congress had failed to provide any form of private remedy for damage resulting from an illegal "hot cargo" agreement would present a very different question from the one before us—a question which it is not now necessary to answer. Cf. *Meat Cutters Local 189* v. *Jewel Tea Co.*, 381 U. S. 676, 708 n. 9 (opinion of Goldberg, J.).

On the other hand, the signatory of a purely voluntary agreement that violates § 8 (e) is fully protected from any damage that might result from the illegal "hot cargo" agreement by his ability simply to ignore the contract provision that violates § 8 (e). If the union should attempt to enforce the illicit "hot cargo" clause through any form of coercion, the employer may then bring a § 303 damage suit or may file an unfair labor practice charge with the Board. See 29 U. S. C. § 158 (b) (4) (B). Since § 8 (e) provides that any prohibited agreement is "unenforcible and void," any union effort to invoke legal processes to compel the neutral employer to comply with his purely voluntary agreement would obviously be unavailing.

ative Alger of Texas joined in cosponsoring the legislation, stating that "union monopoly power" manifests itself in "restrictive trade practices such as price fixing, restrictions on use of new processes and technological improvements, exclusion of products for the market, and so forth. . . . This bill deals directly with [this aspect] of union monopoly power." 105 Cong. Rec. 12136; II 1959 Leg. Hist. 1507. Representative Alger added the following explanation of the bill:

> "Under the language of H. R. 8003 any attempt by a union to induce an employer or a group of employers to comply with a union demand which would result in restrictive trade practices would be unlawful and an employer faced with such a demand could seek legal remedies to restrain the union from enforcing its demand. The consequent denial to unions of the right to fix prices or impose other artificial market limitations would not in any way interfere with normal and legitimate union functions or with their proper collective bargaining powers. They would merely be placed on an equal footing with all other groups in society as was the case during the fifty years prior to the Hutcheson decision." 105 Cong. Rec. 12137; II 1959 Leg. Hist. 1508.

The Landrum-Griffin Bill, H. R. 8400, 86th Cong., 1st Sess., which, as amended, was enacted as the Labor-Management Reporting and Disclosure Act of 1959,[10] by contrast, clearly provided that the new secondary boycott and "hot cargo" provisions were to be enforced solely through the Board and by use of the § 303 damage remedy. See 105 Cong. Rec. 14347–14348; II 1959 Leg. Hist. 1522–1523. Recognizing this important difference, Representative Alger proposed to amend the Landrum-Griffin Bill by adding, as an additional title, the antitrust provisions of H. R. 8003. 105 Cong. Rec. 15532–15533; II 1959 Leg. Hist. 1569. Representative Alger once again stated that his proposed amendment would make it unlawful for an individual local union to "[e]nter into any arrangement—voluntary or coerced—with any employer, groups of employers, or other unions which cause product boycotts, price fixing, or other types of restrictive trade practices." 105 Cong. Rec. 15533; II 1959 Leg. Hist. 1569.

Representative Griffin responded to Representative Alger's proposed amendment by observing that it

> "serves to point out that the substitute [the Landrum-Griffin Bill] is a minimum bill. It might be well at this point to mention some provisions that are not in it.
>
> "There is no antitrust law provision in this bill.
>
> . . . . . .
>
> "This is truly a minimum bill that a responsible Congress should pass. I believe I speak for the gentleman from Georgia [Mr. Landrum], as well as myself when I say that if amendments are offered on the floor to add antitrust provisions or others that have been mentioned, I, for one, will oppose them. The gentleman from Georgia and I have tried to balance delicately the provisions which we believe should be in a bill at this time and which a majority of this body could support." 105 Cong. Rec. 15535; II 1959 Leg. Hist. 1571–1572.

The Alger amendment was rejected, as were additional efforts to subject proscribed union activities to the antitrust laws and their sanctions. See, *e. g.*, 105 Cong. Rec. 15853 (amendment offered by Rep. Hoffman); II 1959 Leg. Hist. 1685. The House then adopted the Landrum-Griffin Bill over protests that it "does not go far enough, that it needs more teeth, and that more teeth are going to come in the form of legislation to bring union activities under the antitrust laws." 105 Cong. Rec. 15858 (remarks of Rep. Alger); II 1959 Leg. Hist. 1690; see 105 Cong. Rec. 15859–15860 (adoption of the Landrum amendment to H. R. 8342, substituting in lieu of the text thereof the text of H. R. 8400 as amended); II 1959 Leg. Hist. 1691–1692.

The House-Senate Conferees made some substantive changes in the language of the amendments to § 8 (b)(4), and also added the construction and garment industry provisos to § 8 (e). See generally Cox, The Landrum-Griffin Amendments to the National Labor Relations Act, 44 Minn. L. Rev. 257. But no change was made in the nature of the sanctions authorized for violations of either section by the House-passed Landrum-Griffin Bill: An injured party could either seek relief from the Board or bring suit for damages under § 303 against unions that violate the revised secondary boycott prohibitions. No provisions were made for exposing proscribed union secondary activity or "hot cargo" agreements to antitrust liability. See H. R. Conf. Rep. No. 1147 on the Labor-Management Reporting and Disclosure Act of 1959, 86th Cong., 1st Sess.; I 1959 Leg. Hist. 934.[11]

[10] The legislative proceedings leading to the passage of the Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act), 73 Stat. 519, began in January 1959 when Senator John Kennedy introduced S. 505, 86th Cong., 1st Sess. In March 1959 Senator Kennedy introduced S. 1555, incorporating 46 amendments to S. 505 made by the Committee on Labor and Public Welfare. S. 1555, with various additional amendments, was approved by the Senate on April 25, 1959, and sent to the House, where it was referred to the Committee on Education and Labor. On July 30, 1959, the House Committee favorably reported H. R. 8342, 86th Cong., 1st Sess. One week earlier H. R. 8400 and H. R. 8401, identical bills, were introduced in the House by Representatives Landrum and Griffin, respectively. The House voted on August 13, 1959, to substitute the text of H. R. 8400 for the text of the House Committee bill, and the Landrum-Griffin Bill was then inserted by the House in S. 1555 in lieu of its provisions. The Conference made several substantive changes in the Landrum-Griffin Bill, which was then passed by both the House and Senate and approved by the President. See generally I 1959 Leg. Hist. vii–xi.

[11] Representative Hiestand, during House debate on the report of the Conference Committee, recommended adoption of the bill as amended by the Conference and complimented Representatives Landrum and Griffin for their efforts in guiding the bill through Congress. But in expressing concern over the fact that the legis-

Indeed, two years after enactment of the Landrum-Griffin Act, Senator McClellan, whose committee hearings into abuses caused by concentrated labor power had played a major role in generating support for the 1959 labor reform legislation, together with five other Senators, introduced a bill to provide antitrust sanctions for illegal "hot cargo" agreements in the transportation industry, despite the fact that such agreements were already expressly prohibited by § 8 (e).[12] As it had in 1947 and 1959, however, Congress in 1961 rejected this effort to subject illegal union secondary conduct to the sanctions of the antitrust laws.

In sum, the legislative history of the 1947 and 1959 amendments and additions to national labor law clearly demonstrates that Congress did not intend to restore antitrust sanctions for secondary boycott activity such as that engaged in by Local 100 in this case, but rather intended to subject such activity only to regulation under the National Labor Relations Act and § 303 of the Labor Management Relations Act. The judicial imposition of "independent federal remedies" not intended by Congress, no less than the application of state law to union conduct that is either protected or prohibited by federal labor law,[13] threatens "to upset the balance of power between labor and management expressed in our national labor policy." *Local 20, Teamsters* v. *Morton*, 377 U. S., at 260. See *Carpenters Local 1976* v. *NLRB*, 357 U. S., at 88–100; *National Woodwork Manufacturers Assn.* v. *NLRB*, 386 U. S., at 619–620. Accordingly, the judgment before us should be affirmed.

JOSEPH F. CANTERBURY, JR., Dallas, Tex. (SMITH, SMITH, DUNLAP & CANTERBURY and BOWEN L. FLORSHEIM, with him on the brief) for petitioner; DAVID R. RICHARDS, Austin, Texas for respondent.

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lation did not restore antitrust sanctions for union secondary activity and other anticompetitive restraints of trade, he warned that "we should act with full knowledge that passage of the Landrum-Griffin bill will not solve every problem. The heart of the problem, the very heart, is the sheer power in the hands of labor union leaders due to their above-the-law status with respect to our antimonopoly laws." 105 Cong. Rec. 18132; II 1959 Leg. Hist. 1719.

[12] Section 2 (a) of Senator McClellan's bill, S. 2573, 87th Cong., 1st Sess., provided that the Sherman Act be amended to read in part:

"Notwithstanding any other provision of law, every contract, agreement, or understanding, express or implied, between any labor organization and any employer engaged in the transportation of persons or property, whereby such employer undertakes to cease, or to refrain from, purchasing, using, selling, handling, transporting, or otherwise dealing in any of the products or services of any producer, processor, distributor, supplier, handler, or manufacturer which are distributed in trade or commerce in any territory of the United States or the District of Columbia, or between any such territory or territories and any State or States or the District of Columbia or with foreign nations, or between the District of Columbia and any State or States or foreign nations, or to cease doing business with any other person shall be unlawful."

[13] I fully agree with the Court's conclusion, *ante*, at 18–19, that federal labor law pre-empts the state law that Connell sought to apply to Local 100's secondary activity in this case.

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IN REPLY PLEASE REFER
TO FILE NO.

July 24, 1975

Honorable Gaylord Nelson
U. S. Senator
Senate Office Building
Washington, D. C.

Dear Senator Nelson:

As you will recall, on July 15th when I testified before the Senate Labor Committee on S-1479, we had a good deal of discussion about nuclear plants. As I recall, Mr. Connerton said that a new agreement has been arrived at to cover all utility construction providing for no-strike clauses with all of the International Unions. Perhaps it is more appropriate to call it a pledge. His testimony appears at pages 66 and 67 of the transcript of July 15, 1975.

I have since endeavored to uncover such an agreement and have not been able to do so. I do not believe any such agreement exists. As you will note, a copy of this letter is being sent to Mr. Connerton so that if he does have some specific proof in this regard, I would hope he would favor me with same.

I am including herewith, however, a copy of the Labor-Management Committee report to President Ford that directs its attention specifically to the utility construction industry, and I note in that particular report that the Federal Government is called upon to establish a small task force of experts to deal with problems in the field including collective bargaining disputes. I submit that this Committee, headed by Secretary Dunlop and composed of various people in labor and management, does indeed have a serious undertaking with regard to moving forward

APRUZZESE & McDERMOTT

Honorable Gaylord Nelson July 24, 1975

with these projects for such vitally needed energy. I do, however, maintain as I testified before your Committee, that S-1479 can do nothing but escalate the type of stoppages that are visited upon these projects, and I repeat, irrespective of the fact that they are entirely union.

It was indeed a pleasure appearing before your Committee and I shall be happy to submit any further information or assistance you may request.

Respectfully yours,

APRUZZESE & McDERMOTT

Vincent J. Apruzzese

VJA:cjs
Encls.

cc: Hon. H. A. Williams
G. B. Heylin
Mr. R. Connerton

PRESIDENT ENDORSES RECOMMENDATIONS OF
L-M COMMITTEE ON UTILITY CONSTRUCTION

President Ford accepts and endorses the recommendations of his Labor-Management Committee for legislative and administrative measures to increase electric utility construction and output as a means of preventing electricity shortages, providing "solid, long-range employment" and contributing significantly to economic expansion.

The recommendations of the President's Labor-Management Committee were unanimous. The committee coordinator is Secretary of Labor John T. Dunlop. The Committee last December recommended a tax cut adding up to $15 billion a year overall, and an increase to 12 percent in the investment tax credit.

In its legislative proposals the Committee recalls its recommendation of tax credits for utilities, notes that Congress increased the investment tax credit to 10 percent for a two-year period, and says it still believes the 12 percent figure is appropriate and should be extended indefinitely for utilities. It recommends that the credit apply to construction work in progress to stimulate "this vital sector which promises to present capacity problems for many years."

Other legislative proposals include:

- Permit depreciation for tax purposes on utility construction expenditures as made;

- Extend the fast write-off on pollution control facilities beyond its present expiration date of December 31, 1975, and extend the same treatment to fuel conversion costs.

- Extend the Nuclear-Indemnity Coverage Law.

- Provide that dividends which are reinvested in new issue common stock of electric utility companies have taxes deferred in order to meet the "urgent need" for equity capital.

The Committee urges that these legislative proposals be incorporated in a single piece of legislation in view of the special need for greater utility capacity and the long lead time required to complete plants and get them in operation.

In the way of administrative action, the Committee proposes:

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"The Federal Government should establish a small task force of experts, with assistance drawn from labor and management with experience in the field of utility construction, to serve as troubleshooters, to discover the impediments to the completion of electric utility plants and to take steps to relieve the particular situation wherever possible. The difficulties will vary from case to case; the problems may include unreasonable environmental restrictions and delays in processing papers, financing, regulatory delay, collective bargaining disputes, production delays in component parts, scheduling of manufactured components, design issues, etc."

Also recommended is consideration of a timetable for the conversion of oil and gas-fueled power plants to coal. The Government should encourage the development of technology to minimize pollution and environmental concerns regarding coal mining and coal use and should reduce the "economic uncertainties" in the mining and use of coal. "This should encourage increased long-term investment in mining which in turn should stimulate employment," the Committee says.

Noting that every effort must be made to increase the percentage of electric power derived from nuclear sources by 1980/1985, the Committee estimates that 10 to 15 million construction hours are required for each nuclear unit installed. It calls for specific government action in the following areas:

- Promote the public acceptance of nuclear power.

- Resolve the uncertainties regarding the nuclear fuel cycle, e.g., long-term nuclear waste disposal, plutonium usage, spent fuel storage and reprocessing.

- Streamline the nuclear regulatory licensing process to reduce the lead time for getting plants into production. The current lead time is about eight to 10 years.

Following are the members of the Committee who participated in the formulation of the recommendations:

For labor: I. W. Abel, president of the Steelworkers; Murray H. Finley, president of the Clothing Workers; Paul Hall, president of the Seafarers; Lane Kirkland, AFL-CIO secretary-treasurer; George Meany, AFL-CIO president; Leonard Woodcock, president of the Auto Workers; and Frank Fitzsimmons, president of the Teamsters.

For management: Stephen D. Bechtel, Jr., chairman, Bechtel Companies; Richard C. Gerstenberg, General Motors Corp.; John D. Harper, chairman, ALCOA; Reginald H. Jones, chairman, General Electric Co.; R. Heath Larry, chairman, U.S. Steel; Rawleight Warner, Jr., chairman, Mobil Oil Corp.; Arthur M. Wood, chairman, Sears, Roebuck & Co.; and Walter B. Wriston, chairman, First National City Bank.

In accepting and endorsing the committee recommendations, President Ford said:

"I will take steps promptly to create the task force the Committee recommends to tackle the problem of delays in the completion of utility plants. In view of the long lead time on construction, completion of plants now in advanced stages of planning or under construction must have top priority."

(Text of the President's statement and the Committee report appear in Section E.)

- 0 -

STATEMENT BY PRESIDENT AND REPORT OF PRESIDENT'S LABOR-MANAGEMENT COMMITTEE RECOMMENDING STEPS TO INCREASE ELECTRIC UTILITY CONSTRUCTION AND OUTPUT

June 13, 1975

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

Today, I am releasing the text of the Labor-Management Committee's recommendations for legislative and administrative measures to increase electric utility construction and output.

Having carefully reviewed these recommendations, I accept and endorse them because they can make a significant contribution in reducing the Nation's dependence on oil imports and in conserving scarce natural gas supplies.

Additionally, an expansion in electric utility construction and production will provide solid, long-range employment which will be highly beneficial to the country. An increase in electric utility capacity will also contribute significantly to economic expansion.

I will take steps promptly to create the task force the Committee recommends to tackle the problem of delays in the completion of utility plants. In view of the long lead time on construction, completion of plants now in advanced stages of planning or under construction must have top priority.

I appreciate the constructive contribution of labor and management working together. The time has come for Government to cooperate in the same spirit in addressing and resolving the Nation's problems. I thank the Committee for its continuing work and appreciate its efforts in the national interest.

* * *

Electric Utilities May 21, 1975

At the end of 1974, it is estimated that electric utilities had deferred or cancelled the construction of 106 nuclear plants (114,000 megawatts) and 129 coal-fired plants (74,413 megawatts). This extensive postponement in construction schedules of coal and nuclear power plants that are needed to meet the nation's energy demands for 1980 and 1985 seriously jeopardizes our national objective of lesser dependence on imported oil. It also threatens continued economic growth, promises to restrain essential job creation and inhibits measures to reduce unemployment. Since electric utilities require a number of years to get new plants on stream, the current slippage of schedules and cancellation of new facilities may be expected to result in future energy shortages and serious restrictions to economic expansion. It is imperative that there be substantial restoration of construction of electric utilities at once. Special measures are needed to shorten significantly the very long lead time which now exists between the design of a project and its completion.

The President's Labor-Management Committee recommends a number of administrative and legislative measures to get this basic and strategic sector of the economy moving.

Special Legislative Proposals

1. The President's Labor-Management Committee earlier recommended that the investment tax credit for utilities be increased from 4 percent to 12 percent a year. The Congress increased the investment tax credit to 10 percent for a two-year period. The Committee still believes the 12 percent figure is appropriate and, in the case of electric utilities, this credit should be extended indefinitely and apply to construction work in progress to stimulate this vital sector which promises to present capacity problems for many years. This proposal is designed to stimulate non-oil and non-gas facilities.

2. In view of the length of time required to complete the construction of electric utility installations, the Federal government should permit depreciation for tax purposes on construction expenditures as made, provided such costs are included in the rate base.

3. The five-year, fast write-off of pollution control facilities should be extended by legislation beyond its present expiration date of December 31, 1975. The fast write-off of pollution control facilities reduces the financing costs of the construction of electric utility units. Fuel conversion costs should receive the same treatment.

4. The Nuclear-Indemnity Coverage law (Price-Anderson Act) should be extended.

5. The urgent need for equity capital in the electric utility industry should be met by a legislative provision that dividends which are reinvested in new issue common stock of the company have tax deferred.

The Committee recommends that the above legislative proposals be incorporated in a single piece of legislation in view of the special need for greater electric utility capacity and the long lead time required to complete plants and get them in operation.

Administrative Action

The Federal government should establish a small task force of experts, with assistance drawn from labor and management with experience in the field of utility construction, to serve as troubleshooters, to discover the impediments to the completion of electric utility plants and to take steps to relieve the particular situation wherever possible. The difficulties will vary from case to case; the problems may include unreasonable environmental restrictions and delays in processing papers, financing, regulatory delay, collective bargaining disputes, production delays in compoenent parts, scheduling of manufactured components, design issues, etc. This task force can expedite the completion of electric utility plants and getting power on stream.

Immediate Improvement in the Policies and Actions Regarding the Usage of Coal and Nuclear Energy

1. Coal

a. Make a major effort toward increasing the domestic production and use of coal to generate power, including the development of economic means of moving either western low-sulphur coal, or the generated power, to the required market areas.

b. A timetable should be considered for the conversion of oil/gas fueled power plants to coal.

c. The government should reduce the uncertainties on coal usage by encouraging the development of technology to minimize pollution and environmental concerns regarding coal mining and coal use and by reducing the economic uncertainties in the mining and use of coal. This should encourage increased long-term investment in mining which in turn should stimulate employment.

2. Nuclear Energy

a. The nation should make every effort to capitalize on the benefits of two decades and billions of dollars of public and private efforts in nuclear power development. While the initial investment costs for nuclear energy are high, it offers the cheapest form of electricity in the long run. Every effort must be

made so that the percentage of electric power generation derived from nuclear sources by 1980/1985 is greatly increased from current levels. It is estimated that 10 to 15 million construction labor hours are required for each nuclear unit installed.

b. Specific government action is required in the following areas:

-- Promote the public acceptance of nuclear power.

-- Resolve the uncertainties regarding the nuclear fuel cycle, e.g., long-term nuclear waste disposal, plutonium usage, spent fuel storage and reprocessing.

-- Streamline the nuclear regulatory licensing process to reduce the lead time for getting plants into production. The current lead time is about 8 to 10 years.

Review and Articulate the National Energy Interest with State Regulatory Agencies

a. The Federal government needs to find an appropriate and realistic approach to get the national energy issues and interests before state regulatory agencies when they have their hearings on utility needs.

b. We must provide for prompt and reasonable action on rate applications.

c. New and innovative rate schemes, such as peak load pricing and rates designed to foster conservation, should be thoroughly studied and evaluated to determine the true impact on the various sectors of the economy.

Environmental Considerations

Stretch out, as necessary, present environmental restrictions on energy production and use to reduce energy consumption and facilitate expansion of domestic energy output. This is basically a matter of timetables, not of objectives. The advance of technology and development of clean energy sources can permit realization of environmental objectives.

-- End of Section E --



PETER FOSCO, General President ... General Secretary-Treasurer ROBERT J. ... General Co...

MORESCHI BUILDING
483

LABORERS' INTERNATIONAL UNION of North America

AFFILIATED WITH AFL-CIO AND CLC

905 16th STREET, N.W. • WASHINGTON, D.C. 20006 • TEL. A/C 202-737-8320

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Ugo Rossini, 8th Vice-President

October 16, 1975

The Honorable Gaylord Nelson
United States Senate
Washington, D.C. 20501

The Honorable Harrison A. Williams, Jr.
United States Senate
Washington, D.C. 20501

Dear Sirs:

This will reply to Mr. Apruzzese's letter of July 24, 1975, regarding the construction of nuclear power plants in the State of New Jersey.

Mr. Apruzzese is a fierce antagonist. I am delighted to discover that he has taken the time from his busy schedule to find as I testified that unanimous agreement had been reached inside the President's Labor-Management Committee, and let me emphasize that portion thereof which indicates the federal government will be establishing a task force which will serve as trouble shooters in the areas of collective bargaining disputes, with assistance from national officials of labor and management experienced in the field of utility construction.

While Mr. Apruzzese from his vantage point in New Jersey makes light of this matter, let me point out that a similar arrangement on the space program at Cape Canaveral led to a totally strike-free program. Further, it should be noted that this agreement is only the second unanimous recommendation of the President's Committee. You will recall that the first agreement dealt with the manner in which the tax reduction should be distributed. You will recall, too, that the Congress in large measure followed this recommendation rather than that of the Administration.

I also indicated in my testimony that separate and apart from the above agreement, the Building Trades Department and its affiliated International Unions have evinced to the utility institutes a willingness to immediately enter into an agreement which would cover

all utility construction to be performed in the United States, which national agreement, amongst other provisions, would include a no-strike, no-lockout clause, and other provisions designed to promote efficiency and productivity. The presence of the head of the Edison Electric Utility Division at the recent Building Trades Department Convention affirmed the recent discussions on this matter. Please find attached a copy of Laborers' International Union agreement with the National Constructors Association, whose members build most of the electric utility plants in the United States, including those which have been constructed to date in the State of New Jersey. You will note that this agreement contains a no-strike no-lockout provision. Similar agreements have been signed with the NCA by most other Building Trades International Unions. If there is any question on this matter, the NCA should be contacted.

Furthermore, nearly all utility plant construction these days is also covered by separate project agreements negotiated between the Building Trades Department, the International Unions, the employing contractor, and the owner. These agreements contain strict no-strike, no-lockout provisions. Again, if there are any questions on this matter, one should contact the NCA.

Mr. Apruzzese neglected to advise you that his Association is bitterly opposed to such national contracts, whether on a national basis, an employer basis, or a project basis. His client interest maintains the unyielding position that all projects, including electric power plants, must be subject to state and local agreements and not national agreements. As I advised, without casting any aspersion on Mr. Apruzzese, or his ability as a lawyer, he is enmeshed as a fierce partisan in the construction industry. Mr. Apruzzese, for example, publishes books on "Forty Ways to Beat Down Unions during the Course of Collective Bargaining;" he delivers anti-union speeches outside the State of New Jersey; as he testified, he files briefs on behalf of the Chamber of Commerce nationally, which is part of a group which has set out to destroy the construction unions by use of such devices as separate gates, double-breasted contractor schemes, anti-trust actions, and attempting to hold International Unions liable for the conduct of their affiliates.

New Jersey has been hit by a rash of strikes in construction this summer. I would suggest that any objective observer would reach the conclusion that the strikes resulted because, as a result of internal discord, some of Mr. Apruzzese's members broke off to form another contractors' association, that as a result the issues in bargaining involved such lofty matters as what contractor association would get what percentage of the collectively bargained industry promotion

funds, what contractors would sit on the fringe benefit funds, what management attorneys would be paid out of the industry promotion funds and would represent the fringe benefit funds. I understand that a third group has now splintered off from his association.

I testified under oath that my Union -- the Laborers -- in New Jersey this year, was required to renegotiate a peaceful settlement of 25 cents per hour, and take over 50 cents more than it had agreed upon originally, all because of the splintering and the competition between the contractor associations in bargaining with other unions. I suggest that the strikes this year in the State of New Jersey were totally unnecessary and were caused solely as a result of the internal division inside the contractors' leadership and counsel. The point of my testimony was that in addition to the President's Committee's agreement, the International Union agreements, the project agreements, the Building Trades Department and its affiliated International Unions are prepared now in cooperation with Secretary Dunlop and the Congress, to work toward legislation which would serve to eliminate most of the economic strikes which are permissible under present law and which, in my judgment, have resulted in large measure because of the bitterness engendered at a local level by such protagonists as Mr. Apruzzese, by moving issues that cannot be resolved at a local level to a national level for resolution. We are not concerned with destroying construction employers or engaging in philosophical arguments; we are interested in the future of the industry and the good of the country.

We are prepared to take affirmative action. If the employers in this industry would spend one-tenth as much time seeking affirmative resolution of structural problems as they spend trying to destroy the unions by clever legalisms and artifices, then we could proceed to restore stability and order to the construction industry.

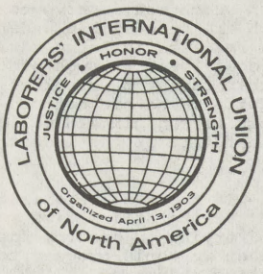
Sincerely yours,

Robert J. Connerton

ROBERT J. CONNERTON
General Counsel

Enclosure

NATIONAL AGREEMENT





LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO
AND
NATIONAL CONSTRUCTORS ASSOCIATION
MARCH 1, 1975

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N A T I O N A L A G R E E M E N T

This Agreement entered into the 1st day of March, 1975 by and between the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, for and on behalf of its affiliated Local Unions and District Councils (hereinafter referred to as the "Union"), and the NATIONAL CONSTRUCTORS ASSOCIATION on behalf of its members who are hereinafter called the "Employer", shall remain in full force and effect for a period of one year from the above date and shall continue from year to year thereafter unless notice of termination is given in writing by either party to the other party at least sixty (60) days, but not more than ninety (90) days prior to any anniversary date.

ARTICLE I

SCOPE OF AGREEMENT

This Agreement shall apply on all construction projects within the United States performed by the Employer or by any person, firm or corporation owned or financially controlled by the Employer.

Where the provisions of Local Union agreements conflict with the terms of this Agreement, the provisions of this Agreement shall prevail.

ARTICLE II

UNION RECOGNITION

The Employer hereby recognizes and acknowledges the Union as the exclusive bargaining representative of all field construction employees performing work covered by this Agreement with respect to wages, hours, and all other terms and conditions of employment.

This Agreement shall not apply to executives, superintendents, assistant superintendents, timekeepers, messenger boys, clerical office workers, guards, confidential employees or any employees above foreman.

ARTICLE III

UNION SECURITY

Section 1

All field construction employees covered by this Agreement, as a condition of their continued employment, shall, commencing on the eighth day following the beginning of their employment or the effective date of this Agreement, whichever is the later, acquire and maintain membership in the Union. Failure of an employee to comply with the provision of this

Article shall upon written request of the Union, result in the termination of such employee. The Employer shall not justify any discrimination against an employee for non-membership in the Union if: (A) he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members or (B) he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

This Section shall not apply in states that have "Right to Work" laws.

Section 2

Either party to this Agreement shall have the right to reopen negotiations pertaining to this Article when the laws applicable thereto have been changed by giving the other party thirty (30) days written notice.

ARTICLE IV

PRE-JOB CONFERENCE

Section 1

The Employer agrees to notify the Building Trades Department of newly acquired construction contracts involving work covered by this Agreement, describing the project and probable date of commencement. A pre-job conference will be scheduled for the earliest possible mutually available date. In emergency situations such as fire, blow-ups and the like, this requirement shall be waived.

Section 2

The purpose of the pre-job conference is to enable the Employer to inform the Union as to expected manpower requirements, probable starting date, duration of the job, work schedules and other matters affecting employees.

ARTICLE V

HIRING

Section 1

The Employer agrees to comply with local area referral and hiring procedures contained in the local Laborers' agreement, provided such procedures meet state and federal laws and are not inconsistent with the terms of this Agreement.

Section 2

The selection of applicants for referral shall be on a non-discriminatory basis and shall not be based on or in any way affected by

Union membership, by-laws, rules, regulations, constitutional provisions or any other aspect or obligation of Union membership, policies or requirements.

Section 3

The Employer shall be the sole judge of the competency and qualifications of individuals referred by the Union, and also of the number of workers required at any time. The Employer shall have the right to hire and discharge accordingly.

Section 4

The parties to this Agreement acknowledge and agree to comply with all requirements of federal and state laws, Executive Orders, and other rules and regulations governing civil rights to insure that there shall be no discrimination in employment against any employee or applicant for employment because of race, creed, color, sex, age or national origin.

Section 5

If, upon request, the Local Union is unable or fails, within 48 hours (Saturdays, Sundays and holidays excluded) to supply qualified workmen including those with special skills, the Employer may secure such workmen from any source.

ARTICLE VI

MANAGEMENT

A. The selection of craft foremen and general foremen shall be entirely the responsibility of the Employer, it being understood that in the selection of such foremen the employer will give primary consideration to the qualified men available in the local area. After giving such consideration the employer may select such men from other areas. Foremen and general foremen shall take orders from individuals designated by the employer.

B. There shall be no limit on production by workmen nor restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trade and shall work under the supervision of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations, provided, however, legitimate manning practices that are a part of national or local agreements shall be followed.

C. Security procedures for control of tools, equipment and materials are solely the responsibility of the employer.

D. Workmen shall be at their place of work at the starting time and shall remain at their place of work performing their assigned functions under the supervision of the employer until the quitting time. The parties reaffirm their policy of a fair day's work for a fair day's wage.

E. Practices not a part of terms and conditions of collective bargaining agreements will not be recognized.

F. Slowdowns, standby crews and featherbedding practices will not be tolerated.

G. A steward shall be a qualified workman performing work of his own craft and shall exercise no supervisory functions. There shall be no non-working stewards.

H. There shall be no illegal strikes, work stoppages or lockouts.

I. When a local union does not furnish qualified workmen within forty-eight (48) hours (Saturdays, Sundays and holidays excluded), the contractor shall be free to obtain workmen from any source.

J. It is agreed that overtime is undesirable and not in the best interests of the industry or the craftsmen. Therefore, except in unusual circumstances, overtime will not be worked. Where unusual circumstances demand overtime, such overtime will be kept at a minimum.

K. If the employer so elects, he may work shift work at the rate negotiated and established in the local collective bargaining agreement. If the local collective bargaining agreement does not contain shift work provisions, the employer may work shift work in accordance with Article VIII, Section I, of this agreement. The employer shall determine the number of men to be assigned to each of the shifts as established.

L. There will not be any organized coffee breaks, rest periods or other non-working time established during working hours.

ARTICLE VII

WAGE AND FRINGE BENEFITS

Section 1

When the employer enters an area where wages, working conditions and fringe benefits affecting employees have been negotiated and legally established pursuant to bona fide collective bargaining, the Employer will be presented with such evidence by the Union and the Employer will, subject to the provisions of the agreement, conform his operations accordingly.

Section 2

After the Employer's operation has commenced in any particular area, no subsequent change in wages or working conditions in such area will become effective insofar as the Employer is concerned, except to the extent that any such change in wages or working conditions shall have been agreed upon and in accordance with the effective date agreed upon in negotiations between the local union having jurisdiction over the area and a recognized bargaining agent of contractors in such area and no conditions shall be imposed thereby other than those enforced on local firms.

Section 3

Notwithstanding the provisions of Section 2, no wage increases or other contract changes shall be effected until approved by CISC or any

successor agency requiring such approval.

Section 4

The Employer will pay the specified contractual rate for all classified jobs, but shall not pay premiums other than overtime.

Section 5

The Employer shall pay only fringe benefit funds for employees (such as pension, health and welfare, training, vacation) that have been legally negotiated and established by a local collective bargaining agreement. Industry promotion funds, for purposes of this agreement, are not considered fringe benefits, and need not be paid by the Employer. Where the local agreement provides for lump sum payments for fringe benefits, funds, and industry promotion funds, the Employer shall not be compelled to pay the lump sum payment but shall only pay the hourly amount covering the fringe benefit and training portion of the payment. The Employer shall not be required to comply with the bonding requirement if provided for in local agreements.

ARTICLE VIII

SHIFT WORK, OVERTIME AND HOLIDAYS

Section 1

When the local collective bargaining agreement does not contain shift provisions, the following shift work provisions shall apply.

Shifts shall be established for a minimum of three (3) days. When two (2) or three (3) shifts are worked, the first or day shift shall be established on an eight (8) hour basis, the second shift shall be established on a seven and one-half (7½) hour basis, the third shift shall be established on a seven (7) hour basis. The pay for the second and third shifts shall be the equivalent of eight (8) hours' pay at the employee's regular hourly rate.

The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift for the fifth day. In the event the second or third shift of any regular work week shall extend into a holiday, employees shall be paid the regular shift rate.

When conditions require, the employer and the Union may revise these shift work provisions to meet the requirements of a particular project.

Section 2

Overtime shall be paid in accordance with the provisions of the established local or area collective bargaining agreement in the area in which the work is being performed. In no case shall the overtime rate exceed double the straight time hourly rate of pay.

Overtime is not to be demanded of the Employer by the Union or any

workman covered by this Agreement as a condition of employment.

Section 3

Holidays shall be recognized in accordance with the applicable local agreement.

ARTICLE IX

PAY DAY

All employees covered by this Agreement shall be paid weekly by check on a day designated by the Employer unless failure to pay on such day is beyond the reasonable control of the employer. If an employee is discharged or laid off, he shall be paid in full provided he is present at the job or place where he is employed. Employees who voluntarily terminate their employment shall be paid by the next pay day at their regular place and time of pay. At the request of such employee, the Employer may mail his check to him.

The Employer may withhold a reasonable amount of wages, not to exceed five (5) days to enable the Employer to prepare a payroll.

ARTICLE X

MANAGEMENT RIGHTS

The Employer retains full and exclusive authority for the management of its operations. The Employer shall direct his working forces at his sole prerogative, including, but not limited to, hiring, promotion, transfer, layoff or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working effort of employees. The Employer shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design. The Employer shall schedule work, and shall determine when overtime will be worked, and by whom.

The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically set forth. The Employer, therefore, retains all legal rights not specifically covered by this Agreement.

ARTICLE XI

SUBCONTRACTORS

It is agreed that subcontractors engaged to perform work covered by this Agreement for the Employer shall observe all the terms and conditions of this Agreement.

ARTICLE XII

SAFETY

The Employer and the Union agree to cooperate in developing a safety attitude among the employees and to work toward achieving compliance with the provisions of the federal Occupational Safety and Health Act. Employees who do not use the personal protective equipment furnished by the Employer, or who disregard the project safety, housekeeping or equipment regulations will be subject to disciplinary action by the Employer including discharge.

ARTICLE XIII

UNION REPRESENTATION

(1) Authorized representatives of the Union shall have reasonable access to the project, provided they do not interfere with the work of employees, and further provided that such representatives fully comply with the visitor and security rules established for the project.

(2) The Business Representative for each of the Local Unions shall have the right to designate a working steward. Such designated stewards shall be qualified workmen assigned to a crew and shall perform the work of their craft. Under no circumstances shall there be a non-working steward.

(3) The working steward will be paid at the applicable wage rate for the job classification in which he is performing work.

(4) The Union may appoint a steward for each shift.

(5) The working steward will not be entitled to any preferential treatment by the Employer and will be subject to discipline (including discharge) to the same extent that other employees are. However, the Employer will give prior notice to the Union if it becomes necessary to discharge the steward. The Employer will permit the steward sufficient time to perform the duties inherent to a steward's responsibilities.

(6) The steward's duties shall not include hiring and termination, nor shall he cause any interference with work progress.

(7) Each steward shall be concerned with the employees of his Employer and not with the employees of any other Employer working nearby.

ARTICLE XIV

JURISDICTIONAL DISPUTES PROCEDURE

Section 1

It is agreed that the assignment of work and the settlement of jurisdictional disputes shall be in accordance with the "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry", dated June 1, 1973, or its successor.

Section 2

There shall be no stoppage of work or slowdown by employees because of jurisdictional disputes.

ARTICLE XV

GRIEVANCE PROCEDURE

It is specifically agreed that there shall be no strikes, lockouts or cessation or slowdown of work or picketing over any dispute over the application or interpretation of this Agreement, and that all grievances and disputes, excluding jurisdictional disputes, shall be handled as hereinafter provided.

A. In the event of such a dispute or grievance, the complaining party shall notify the other party in writing within three (3) days, excluding Saturdays, Sundays and Holidays. The Business Representative of the local union and the contractor's representative shall have five (5) days from the date of notification in which to settle the dispute.

B. Failing in settlement under Step A, the matter shall be referred to the International Representative of the Union and the Employer's Director of Labor Relations, who shall have five (5) days following date of receipt in which to settle the dispute.

C. Failing in settlement under Step B, the matter shall be referred to a Board of Arbitration consisting of one (1) person appointed by each party and a third member selected by the respective Board Members. If the members appointed by each party fail to agree upon a third member within three (3) days, they shall request the Federal Mediation and Conciliation Service to furnish a list of five (5) arbitrators. Upon receipt of said list, the Board Members shall each strike two (2) names from said list and the remaining arbitrator on the list shall be the third member of the Board of Arbitration. Said Board shall consider the dispute or grievance within five (5) days thereafter. The parties agree that the majority decision of said Board shall be final, conclusive and binding upon them. Such decision shall be within the scope and terms of this Agreement and in no event shall modify the terms of this Agreement.

D. The time limits specified in Steps B and C may be extended by mutual agreement of the parties.

E. Each party shall bear its own expenses incurred in arbitration and shall share equally the expenses of the third member to the Board of Arbitration.

ARTICLE XVI

NO STRIKE, NO LOCKOUT

There will be no strikes, work stoppages or slowdowns by the Unions,

or lockouts by the Employer. In the event of an area strike over local contract negotiations, it will not be considered a violation of the Agreement for the Employer to stop work covered by this Agreement for the duration of a strike provided notification is given to the Union five (5) working days prior to taking such action. In the event of an area strike over local contract negotiations, it will not be considered a violation of the Agreement for the Union to refuse to furnish men to the Employer for the duration of the strike, provided notification is given to the Employer five (5) working days prior to taking such action. In the event the Union elects to withhold the services of its members in accordance with this paragraph, there shall be no pickets or other efforts to disrupt the project.

This no strike, no lockout commitment is based upon the agreement by both parties to be bound by the grievance and arbitration provisions of Article XV and the Jurisdictional Dispute Procedure authorized in Article XIV of this Agreement.

ARTICLE XVII

SAVINGS CLAUSE

Should any part of or any provision herein contained be rendered or declared invalid by any reason of any existing or subsequently enacted legislation, or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of Agreement shall not invalidate the remaining portion hereof; provided, however, upon such invalidation, the parties signatory hereto agree to immediately meet to renegotiate such parts or provisions affected. The remaining part or provisions shall remain in full force and effect.

ARTICLE XVIII

TERM OF AGREEMENT

(1) This Agreement shall be effective as of 12:01 A.M., this 1st day of March, 1975, until 12:00 P.M. (Midnight), the 29th day of February, 1976, and shall continue in full force and effect from year to year thereafter unless changed or terminated as provided for in paragraph (2) of this Article.

(2) Either party desiring to change or terminate this Agreement after February 29, 1976, must notify the other in writing at least sixty (60), but not more than ninety (90) days prior to Midnight February 29, 1976, or the anniversary of this date in any succeeding year. If notification is given by either party in accordance with this paragraph, and the parties have been unable to reach agreement on provisions of a new agreement prior to such expiration date, either party may at that time treat this collective bargaining agreement as cancelled.

(3) This Agreement shall not be amended or supplemented except by mutual consent of the parties hereto, reduced to writing and duly signed by each.

(4) This Agreement shall remain in full force and effect for the

duration of any project where construction work has commenced.

NATIONAL CONSTRUCTORS ASSOCIATION

William L. Lewis Jr.
President

Executive Vice-President

James Sexton
Chairman

W. G. Bell

Ed Ryan

Jack Walling

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO

General President

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Vice-President

Michael Sabella
Vice-President

Angelo Fosco
Vice-President

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