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CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

OR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 2305

TO ESTABLISH A NATIONAL FRAMEWORK FOR COLLECTIVE BARGAINING IN THE CONSTRUCTION INDUSTRY, AND FOR OTHER RELATED PURPOSES

SEPTEMBER 16 AND 17, 1975

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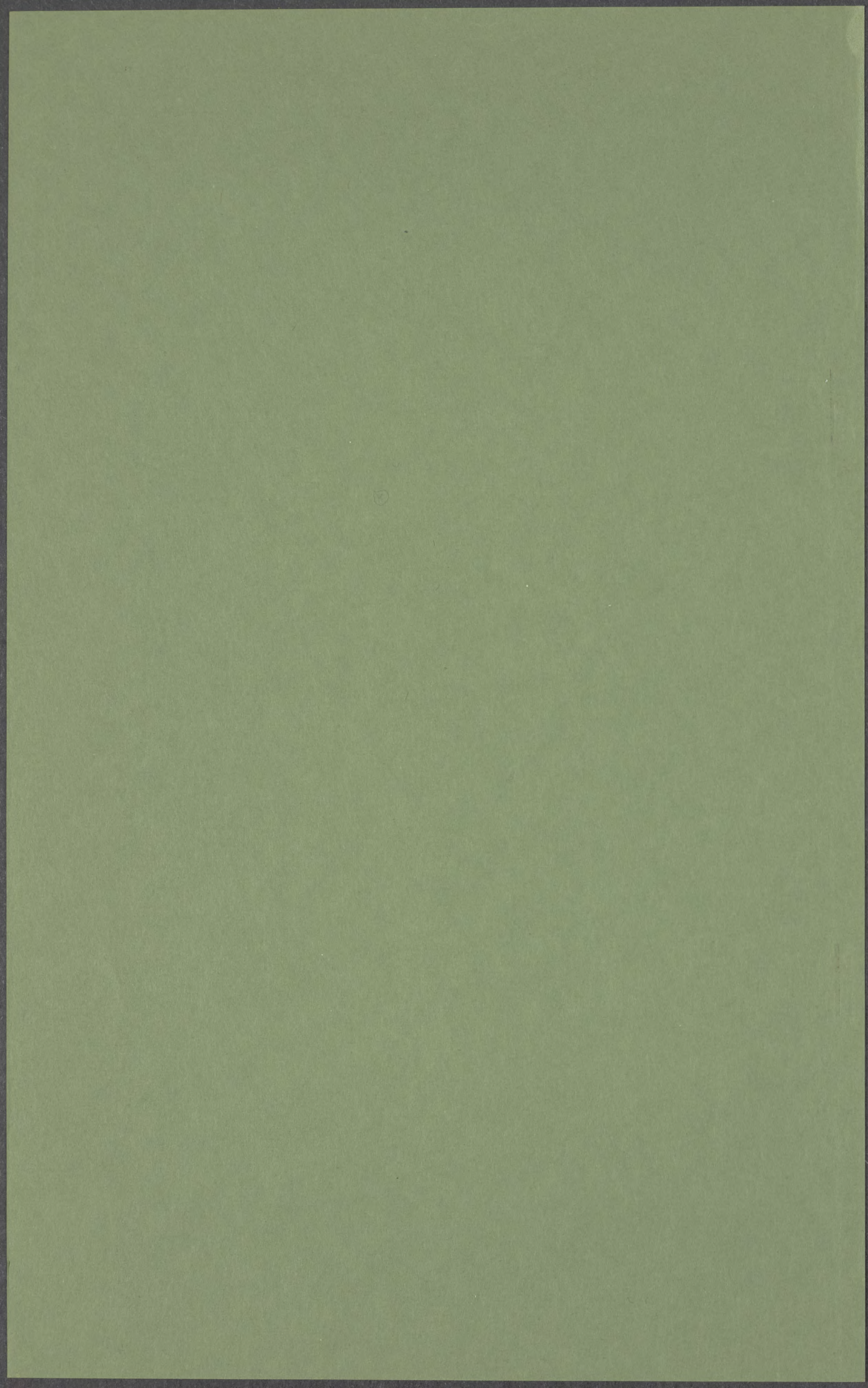

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

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U.S. GOVERNMENT PRINTING OFFICE

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CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

TUESDAY, SEPTEMBER 16, 1975

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

The subcommittee met, pursuant to call, at 9:30 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Randolph, Hathaway, Javits, Schweiker, Taft, Stafford, and Laxalt.

The CHAIRMAN. We will bring this hearing of the Senate Subcommittee on Labor to order. Today, we conduct the first of 2 days of hearings on S. 2305, the Construction Industry Collective Bargaining Act of 1975.

This bill, which I introduced on September 8 of this year, with Senators Javits, Randolph, Kennedy, Taft, Stafford, Burdick, Tunney, Hartke, Beall, Ribicoff, and Gravel—let me say at the outset that the pattern of collective bargaining in this vital industry is highly fragmented. This fragmentation reflects the nature of the industry itself, which comprises a variety of trades and crafts who have come together in joint venture at a single construction site.

The fragmentation that exists in this situation holds the potential for instability in an industry upon which our economic growth is highly dependent. The construction industry is too important in meeting our national housing and industrial needs to be left without a firm national labor policy which is calculated to protect the rights of construction tradesmen, while promoting stability and continuity within the industry.

The goal must be to promote peaceful resolution of a dispute between labor and management in the industry and with as little governmental involvement as possible, so the bill that has been drafted by Secretary Dunlop and presented to the Congress for introduction, and which has been introduced, is aimed at achieving those goals, and certainly it is well to begin our hearings with the Secretary of Labor, on the administration's proposal, which represents the culmination of Secretary Dunlop's many years of study of construction bargaining, his very personal dedication to the promotion of stability in this industry.

The balance of my opening statement, I will include in the record.

[The full text of Senator Williams' opening statement follows:]

OPENING STATEMENT OF SENATOR WILLIAMS

Today the Labor Subcommittee will conduct the first of two days of hearings on S. 2305—The Construction Industry Collective Bargaining Act of 1975.

This bill, which I introduced on September 8, 1975, with Senator Javits is co-sponsored by Senators Randolph, Kennedy, Taft, Stafford, Burdick, Tunney, Hartke, Beall, Ribicoff and Gravel.

The pattern of collective bargaining in this vital industry is highly fragmented. This fragmentation reflects the nature of the industry itself, which comprises a variety of trades and crafts that come together in joint venture at a single site.

The fragmentation holds a potential for instability in an industry upon which our economic growth is highly dependent.

The construction industry is too important to meeting our national housing and industrial needs to be left without a firm national labor policy which is calculated to protect the rights of construction tradesmen while promoting stability and continuity within the industry.

The goal must be to promote peaceful resolution of a dispute between labor and management in the industry with as little Governmental involvement as possible.

S. 2305 is intended as a means of fostering that cooperation. It has been prepared by a working group composed of leaders from labor and management in the construction industry, and the Secretary of Labor. In many ways, this bill expands upon Secretary Dunlop's testimony before the Senate Labor Committee on July 10, 1975, when he outlined some long-term approaches while speaking in support of S. 1479.

The essence of S. 2305 is its approach to the problems of fragmentation and the need for structural reform in the system of collective bargaining. This bill would, if enacted, establish a Construction Industry Collective Bargaining Committee.

This Committee would be given broad discretionary authority under the bill to take actions which would promote the peaceful resolution of disputes arising out of collective bargaining negotiations.

This bill does not apply to independent labor organizations, it applies only to construction labor organizations which are affiliated with standard national labor organizations.

This bill would not create a mandatory national labor-management negotiation system nor would the Committee have authority to impose an agreement on the parties.

The basic premise of this bill relies on a spirit of cooperation among the parties.

Government simply does not have the answer to the problems affecting this industry. Therefore, the proper role of government is to provide a mechanism for those private parties most intimately concerned with this industry, and most knowledgeable about this industry to get involved in the process of revising the very structure of collective bargaining.

The Committee is designed to study and recommend. It's purpose is to persuade rather than command.

The Committee will operate from a basis of commonly held ideas and beliefs about the way this industry should function:

(1) To maximize productivity and manpower development;

(2) To provide stability in construction industry employment; and

(3) To reduce distortions in the results of collective bargaining.

Today we will hear testimony from Dr. John T. Dunlop, Secretary of Labor; Mr. Robert Georgine, president of the Building and Construction Trades Department, AFL–CIO; Mr. Harry P. Taylor, Council of Construction Employers; and Mr. Laurence F. Rooney, Associated General Contractors of America.

I am delighted at the opportunity for this committee to learn about this bill from the Secretary of Labor. The administration's proposal represents the culmination of Secretary Dunlop's many years of study of construction bargaining and his very personal dedication to the promotion of stability in this vital industry.

The CHAIRMAN. At this point we will include in the record the text of S. 2305.

[The text of S. 2305 follows:]

94TH CONGRESS
1ST SESSION

S. 2305

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 1975

Mr. WILLIAMS (for himself, Mr. BEALL, Mr. BURDICK, Mr. GRAVEL, Mr. HARTKE, Mr. JAVITS, Mr. KENNEDY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STAFFORD, Mr. TAFT, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To establish a national framework for collective bargaining in the construction industry, and for other related purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Construction Industry
4 Collective Bargaining Act of 1975".

5 FINDINGS AND PURPOSES

6 SEC. 2. (a) The Congress finds and declares that the
7 legal framework for collective bargaining in the construction
8 industry is in need of revision; and that an enhanced role
9 for national labor organizations and national contractor as-
10 sociations working as a group is needed to minimize insta-

1 bility, conflict, and distortions, to assure that problems of
2 collective-bargaining structure, productivity and manpower
3 development are constructively approached by contractors
4 and unions themselves, and at the same time to permit the
5 flexibility and variations that appropriately exist among lo-
6 calities, crafts, and branches of the industry.
7 (b) It is therefore the purpose of this Act to establish
8 a more viable and practical structure for collective bargain-
9 ing in the construction industry by establishing procedures
10 for negotiations with a minimum of governmental interfer-
11 ence in the free collective-bargaining process.
12 CONSTRUCTION INDUSTRY COLLECTIVE
13 BARGAINING COMMITTEE
14 SEC. 3. (a) There is hereby established in the Depart-
15 ment of Labor a Construction Industry Collective Bargain-
16 ing Committee (hereinafter referred to as the "Commit-
17 tee"). The Committee shall consist of ten members qualified
18 by experience and affiliation to represent the viewpoint of
19 employers engaged in collective bargaining in the construc-
20 tion industry, and ten members qualified by experience and
21 affiliation to represent the viewpoint of the standard national
22 labor organizations in the construction industry. In addition,
23 the Committee shall have up to three public members quali-
24 fied by training or experience to represent the public interest,
25 one of whom shall be designated by the President to serve

1 as Chairman. All actions of the Committee shall be taken
2 by the Chairman or the Executive Director on behalf of the
3 Committee. The Secretary of Labor and the Director of the
4 Federal Mediation and Conciliation Service shall serve as ex
5 officio members. The employer, labor, and public members
6 shall be appointed by the President after consultation with
7 representative labor and management organizations in the
8 industry whose members are engaged in collective bargain-
9 ing. Any alternate members who may be appointed shall
10 be appointed in the same manner as regular members.
11 (b) The Secretary of Labor may appoint such staff as
12 is appropriate to carry out the Committee's functions under
13 this Act, and with the approval of the Committee, may ap-
14 point an Executive Director.
15 (c) The Committee may from time to time promulgate
16 such rules and regulations as may be necessary or appro-
17 priate to carry out the purposes of this Act.
18 NOTICE REQUIREMENTS
19 SEC. 4. (a) In addition to the requirements of any other
20 law, including section 8 (d) of the National Labor Relations
21 Act, as amended, where there is in effect a collective bar-
22 gaining agreement covering employees in the construction
23 industry between a local construction labor organization or
24 other subordinate body affiliated with a standard national
25 construction labor organization, or between a standard na-

1 tional construction labor organization directly, and an em-
2 ployer or association of employers, neither party shall ter-
3 minate or modify such agreement or the terms or conditions
4 thereof without serving a written notice of the proposed
5 termination or modification in the form and manner pre-
6 scribed by the Committee at least sixty days prior to the
7 expiration date thereof, or in the event such collective bar-
8 gaining agreement contains no expiration date, sixty days
9 prior to the time it is proposed to make such termination or
10 modification. The notice required by this subsection shall be
11 served as follows:
12 (1) a local construction labor organization or other
13 subordinate body affiliated with a standard national con-
14 struction labor organization shall serve such notice upon
15 such national organization;
16 (2) an employer or local association of employers
17 shall serve such notice upon all national construction con-
18 tractor associations with which the employer or associ-
19 ation is affiliated. An employer or local association of
20 employers, which is not affiliated with any national con-
21 struction contractor association shall serve such notice
22 upon the Committee; and
23 (3) standard national construction labor organiza-
24 tions and national construction contractor associations
25 shall serve such notice upon the Committee with re-

1 spect to termination or modification of agreements to
2 which they are directly parties.
3 The parties shall continue in full force and effect, without
4 resorting to strike or lockout, all the terms and conditions
5 of the existing collective bargaining agreement for a period
6 of sixty days after the notice required by this subsection is
7 given or until the expiration of such collective bargaining
8 agreement, whichever occurs later.
9 (b) Standard national construction labor organizations
10 and national construction contractor associations shall furnish
11 to the Committee copies of all notices served upon them as
12 provided by subsection (a) of this section.
13 (c) The Committee may prescribe the form and manner
14 and other requirements relating to the submission of the
15 notices required by this section.
16 ROLE OF THE COMMITTEE AND NATIONAL LABOR AND EM-
17 PLOYER ORGANIZATIONS IN LABOR DISPUTES
18 SEC. 5. (a) In the event that the Committee has re-
19 ceived notice pursuant to section 4, it may take jurisdiction
20 of the matter by transmitting written notice to the signatory
21 labor organization or organizations and the association or
22 associations of employers directly party to the collective
23 bargaining agreement with ninety days following the giving
24 of notice under section 4 (a). The Committee shall decide
25 whether to take such jurisdiction in accordance with the

1 standards set forth in section 6. When the Committee has
2 taken jurisdiction under this section, it may in order to fa-
3 cilitate a peaceful voluntary resolution of the matter and the
4 avoidance of future disputes: (1) refer such matter to vol-
5 untary national craft or branch boards or other appropriate
6 organizations established in accordance with section 7; (2)
7 meet with interested parties and take other appropriate ac-
8 tion to assist the parties; or (3) take the action provided for
9 in both preceding paragraphs (1) and (2) of this subsec-
10 tion. When the Committee has taken jurisdiction within the
11 ninety-day period specified in this subsection over a dispute
12 relating to the negotiation of the terms or conditions of any
13 collective bargaining agreement involving construction work
14 between: (1) any standard national construction labor or-
15 ganization, or any local construction labor organization or
16 other subordinate body affiliated with any standard national
17 construction labor organization, and (2) any employer or
18 association of employers, notwithstanding any other law, no
19 such party may, at any time prior to the expiration of the
20 ninety-day period specified in this subsection, engage in any
21 strike or lockout, or the continuing thereof, unless the Com-
22 mittee sooner releases its jurisdiction.
23 (b) When the Committee receives any notice required
24 by section 4, it is authorized to request in writing at any
25 time during the ninety-day period specified in subsection (a)

1 of this section participation in the negotiations by the stand-
2 ard national construction labor organizations with which the
3 local construction labor organizations or other subordi-
4 nate bodies are affiliated and the national construction con-
5 tractor associations with which the employers or local em-
6 ployer associations are affiliated.
7 (c) In any matter as to which the Committee takes ju-
8 risdiction under subsection (a) of this section and makes a
9 request authorized by subsection (b) of this section, no
10 new collective bargaining agreement or revision of any ex-
11 isting collective bargaining agreement between a local con-
12 struction labor organization or other subordinate body affili-
13 ated with the standard national construction labor organiza-
14 tion, and an employer or employer association shall be of any
15 force or effect unless such new agreement or revision is ap-
16 proved in writing by the standard national construction labor
17 organization with which the local labor organization or other
18 subordinate body is affiliated. Prior to such approval the
19 parties shall make no change in the terms or conditions of
20 employment.
21 (d) No standard national construction labor organiza-
22 tion or national construction contractor association shall have
23 any criminal or civil liability arising out of a request by
24 the Committee for its participation in collective bargaining
25 negotiations, participation in collective bargaining negotia-

1 tions or the approval or refusal to approve a collective bar-
2 gaining agreement. Nor shall any of the foregoing constitute
3 a basis for the imposition of civil or criminal liability on a
4 standard national construction labor organization or national
5 construction contractor association.

6 (e) Nothing in this Act shall be deemed to authorize the
7 Committee to modify any existing or proposed collective
8 bargaining agreement.

9 STANDARDS FOR COMMITTEE ACTION

10 SEC. 6. The Committee shall take action under section
11 5 only if, in its discretion, it believes such action would—

12 (a) facilitate collective bargaining in the construc-
13 tion industry, improvements in the structure of such bar-
14 gaining, agreements covering more appropriate geo-
15 graphical areas, or agreements more accurately reflect-
16 ing the condition of various branches of the industry;

17 (b) promote stability of employment;

18 (c) encourage collective bargaining agreements em-
19 bodying appropriate expiration dates;

20 (d) promote practices consistent with appropriate
21 apprenticeship training and skill level differentials
22 among the various crafts or branches;

23 (e) promote voluntary procedures for dispute set-
24 tlement; or

25 (f) otherwise be consistent with the purposes of this
26 Act.

1 OTHER FUNCTIONS OF THE COMMITTEE

2 SEC. 7. (a) The Committee may promote and assist in
3 the formation of voluntary national craft or branch boards or
4 other appropriate organizations composed of representatives
5 of one or more standard national construction labor organi-
6 zations and one or more national construction contractor as-
7 sociations for the purpose of attempting to seek resolution of
8 local labor disputes and review collective bargaining policies
9 and developments in the particular craft or branch of the
10 construction industry involved. Such boards, or other appro-
11 priate organizations, may engage in such other activities re-
12 lating to collective bargaining as their members shall mutu-
13 ally determine to be appropriate.

14 (b) The Committee may, from time to time, make such
15 recommendations as it deems appropriate, including those
16 intended to assist in the negotiation of collective bargaining
17 agreements in the construction industry; to facilitate area
18 bargaining structures; to improve productivity, manpower
19 development and training; to promote stability of employ-
20 ment and appropriate differentials among branches of the
21 industry; to improve dispute settlement procedures; and to
22 provide for the equitable determination of wages and bene-
23 fits. The Committee may make other suggestions, as it deems
24 appropriate, relating to collective bargaining in the con-
25 struction industry.

1 MISCELLANEOUS PROVISIONS

2 SEC. 8. (a) This Act shall apply only to activities af-
3 fecting commerce as defined in sections 2 (6) and (7) of
4 the National Labor Relations Act, as amended.

5 (b) Nothing in this Act shall be construed to require
6 an individual employee to render labor or services without
7 the employee's consent, nor shall anything in this Act be
8 construed to make the quitting of labor by an individual
9 employee an illegal act; nor shall any court issue any proc-
10 ess to compel the performance by an individual employee of
11 such labor or services, without the employee's consent; nor
12 shall the quitting of labor by an employee or employees in
13 good faith because of abnormally dangerous conditions for
14 work at the place of employment of such employee or em-
15 ployees be deemed a strike under this Act.

16 (c) The failure or refusal to fulfill any obligation im-
17 posed by this Act on any labor organization, employer or as-
18 sociation of employers shall be remediable only by a civil
19 action for equitable relief brought by the Committee in a dis-
20 trict court of the United States, according to the procedures
21 set forth in subsection (d) of this section. The decision of
22 the Committee to take jurisdiction over a matter, to refuse
23 to take jurisdiction over a matter, and the actions taken
24 by the Committee in the exercise of jurisdiction shall not be
25 reviewable in any court, except for a determination of

1 whether the Committee acted in excess of its delegated
2 powers and contrary to a specific prohibition in this Act.
3 (d) The Committee may direct that the appropriate
4 district court of the United States having jurisdiction of the
5 parties be petitioned to enforce any provision of this Act. In
6 any action under this Act the factual determinations of the
7 Committee shall be conclusive unless found by the court to
8 be arbitrary or capricious. No court shall issue any order
9 under section 5 (a) prohibiting any strike, lockout, or the
10 continuing thereof, for any period beyond the ninety-day
11 period specified in section 5 (a).
12 (e) Services of members or alternate members of the
13 Committee may be utilized without regard to section 665 (b)
14 of title 31, United States Code. Such individuals shall be
15 deemed to be special Government employees on days in
16 which they perform services for the Committee.
17 (f) In granting appropriate relief under this Act the
18 jurisdiction of United States courts sitting in equity shall not
19 be limited by the Act entitled "An Act to amend the Judicial
20 Code to define and limit the jurisdiction of courts sitting in
21 equity, and for other purposes," approved March 23, 1932
22 (29 U.S.C. 101 et seq.).
23 (g) The Committee may make studies and gather data
24 with respect to matters which may aid in carrying out the
25 provisions of this Act.

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1 COORDINATION

2 SEC. 9. (a) At the request of the Committee, the other
3 agencies and departments of the Government shall provide,
4 to the extent permitted by law, information deemed neces-
5 sary by the Committee to carry out the purposes of this Act.
6 (b) The Committee and the Federal Mediation and
7 Conciliation Service shall regularly consult and coordinate
8 their activities to promote the purposes of this Act.

9 DEFINITIONS

10 SEC. 10. The terms "labor dispute," "employer," "em-
11 ployee," "labor organization," "person," "construction,"
12 "lockout," and "strike" shall have the same meaning as
13 when used by the Labor-Management Relations Act, 1947,
14 as amended.

15 SEPARABILITY

16 SEC. 11. If any provision of this Act, or the application
17 of such provision to any person or circumstance, shall be held
18 invalid, the remainder of this Act, or the application of such
19 provision to persons or circumstances other than those as
20 to which it is held invalid, shall not be affected thereby.

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 12. There are authorized to be appropriated such
23 sums as may be necessary to carry out this Act.

1 EFFECTIVE DATE, EXPIRATION DATE, AND REPORTS

2 SEC. 13. (a) This Act shall take effect on the date of
3 its enactment, and shall expire on February 28, 1981.

4 (b) No later than one year following the date of enact-
5 ment of this Act, and at one-year intervals thereafter, the
6 Committee shall transmit to the President and to the Con-
7 gress a full report of its activities under this Act during the
8 preceding year.

9 (c) No later than September 1, 1980, the Committee
10 shall transmit to the President and to the Congress a full
11 report on the operation of this Act, together with recom-
12 mendations, including a recommendation as to whether this
13 Act should be extended beyond the expiration date specified
14 in subsection (a) of this section, and any other recommen-
15 dations for legislation to further promote the purposes of this
16 Act.

The CHAIRMAN. Are there any other statements for the record from the members of the committee this morning? Senator Taft?

Senator TAFT. Mr. Chairman, in my view this bill represents a significant contribution to the stabilization of construction industry labor relations.

Without a doubt, the construction industry is one of the hardest hit industries in our current economic slump. The decline of this vital industry has in part resulted in counterproductive industry practices which include the whipsawing of contractors by different locals with which they negotiate, leapfrogging by some unions in competition with other locals to gain the highest wages, and the willingness of local contractors to bargain for and agree to unrealistic wage demands.

Let's face it: some construction unions have priced themselves out of certain competitive markets.

All these practices have contributed to a chaotic pattern that presently exists in the industry, which will not be broken unless some substantial reform of the bargaining process can be achieved.

This bill is a positive step to try to bring a new order to the construction industry collective bargaining process, and I for one welcome it.

The CHAIRMAN. Thank you, Senator Taft.

Senator Schweiker? Senator Stafford?

Senator RANDOLPH. Mr. Chairman, I feel that the members of the Subcommittee on Labor share the views of the chairman on the serious situation that faces many elements of our construction industry at the present time.

There is no argument, of course, that there is a much higher rate of unemployment of construction workers than in many other segments of the labor force, and in connection with the problems that face the industry—not only from the standpoint of management, but of labor also—I ask unanimous consent to place in the record at this point an editorial which appeared in the Washington Star of yesterday. It is titled "Ending Construction Chaos."

Now, I am not sure that the Secretary of Labor will say that there is chaos within the construction industry, but during his testimony, I have reason to believe that he will give to us those recommendations which are supported in the editorial to which I have made reference, and which are on the constructive side as we go into these further hearings.

The editorial concluded that the Dunlop plan would help bring collective bargaining to an industry in which bargaining has been anything but collective. It deserves prompt attention by the Congress, and of course, that, Mr. Chairman and my colleagues, is what we are doing in the hearing today, and in future hearings.

I want to express to the Chair my willingness to do what I can to help reduce the problems in the construction industry, which have an impact on our entire economy.

I thank the Chair.

[The full text of the editorial mentioned by Senator Randolph follows:]

[From the Washington Star, Sept. 15, 1975]

ENDING CONSTRUCTION CHAOS

The chaotic condition of contract bargaining in the construction industry has long been a source of vexation to both labor and management and has contributed in no small part to high building costs.

Secretary of Labor John Dunlop has a proposal for new procedures that should go far to eliminate harmful practices in the strike-prone industry. It would give national union leaders and employer groups more control over rambunctious local units and would tend to bring more order to the bargaining process.

The heart of the plan is the creation of a joint national committee of labor, management and government officials to oversee bargaining negotiations. Local unions and contractors would be required to notify their national counterparts 60 days before contracts expire, and the national officials in turn would have to notify the joint committee. The committee, to be called the Construction Industry Collective Bargaining Committee, could take jurisdiction over any local bargaining situation and could block strikes for up to 30 days after a contract expires. National unions could block a local contract, even if approved by the local union.

Among the practices that Secretary Dunlop's plan is designed to eliminate are the "whipsawing" of contractors by different locals with which they deal, the "leapfrogging" by local unions competing to score the highest wage gains, the readiness of local contractors to accept large wage demands, and the splintering of bargaining in a single market area.

More orderly and restrained bargaining should result in improved productivity, lower construction costs and a reduction in the loss of jobs by union members who are being displaced by non-union labor in areas where unions are pricing themselves out of the market.

The Dunlop plan would help bring collective bargaining to an industry in which bargaining has been anything but collective. It deserves prompt attention by the Congress.

The CHAIRMAN. Mr. Secretary, I am glad that Senator Randolph included that endorsement. We will proceed now with your testimony. Thank you.

STATEMENT OF HON. JOHN T. DUNLOP, SECRETARY OF LABOR

Secretary DUNLOP. Thank you, Mr. Chairman, and distinguished members of the committee.

I thought, Mr. Chairman, with your permission, that I would simply submit the statement which has been distributed earlier to the committee, submit it for the record and take the time to deal with, perhaps, three or four points in a brief statement on my part, and leave, therefore, the maximum amount of time for questioning. If that procedure is agreeable to you, I would like to submit this statement.

The CHAIRMAN. It is certainly agreeable with me. I have had the opportunity to read your text—the text of your statement, and so to me that is acceptable. I know Senator Randolph has indicated he has reviewed your statement that has been made available to us, so I suggest we do proceed that way.

The full text of your prepared statement will be included in the record at the conclusion of your testimony.

Secretary DUNLOP. I therefore in these brief introductory remarks, Mr. Chairman, really wish to answer three questions. First, what is the purpose of this piece of legislation?

Second, how was it developed?

And third, how would it operate, in fact?

Those are the three questions.

With respect to the first, as to its purpose, I think that the most succinct statement I know how to make is really stated at pages 13 and 14 of the testimony, and I would like to just read those several paragraphs, and then go on to the second question.

The purpose of the bill is to revise the framework of collective bargaining in the construction industry. It provides an enhanced role in negotiations for national labor organizations and national contractor organizations, working as a group, while at the same time preserving the flexibility and variations that appropriately exist among localities, crafts, and branches of the industry.

The proposed legislation seeks to improve the dispute settlement, over the terms of contracts, with a minimum of Government interference in the collective bargaining process. It seeks to use the process of collective bargaining itself, rather than Government regulation, to improve the structure and the procedures of collective bargaining.

It is important, I think, Mr. Chairman, to emphasize that the proposed machinery does not constitute wage and price control, nor is it a form of compulsory arbitration.

It applies solely to standard labor organizations and to contractors and their associations engaged in collective bargaining.

It is not applicable to contractors with independent unions, and I wish to emphasize this final sentence—*the proposed legislation does not apply in any way to contractors who do not operate under collective bargaining agreements*.

One other introductory comment; as to the meaning of the phrase "standard national construction labor organization" should be clear.

Mr. Chairman—you particularly, and other members of the committee, will be familiar with the use of the phrase in the railroad industry. I am using it here to refer to the 17 national unions affiliated with building and construction trades department of the AFL-CIO and the International Brotherhood of Teamsters, which has engaged in collective bargaining in this industry, with respect particularly to dump trucks and other trucking operations, closely intertwined with other basic construction trades.

So much for my first question—what is its purpose?

Second, how was it developed, Mr. Chairman?

In a certain sense, this piece of legislation arose out of many years of discussion in the industry, between the top labor representatives and the top management representatives among the associations.

One of the reasons why a consensus, Mr. Chairman, was able to be achieved in a relatively short time since I last appeared before this committee, is because there had been many years of informal discussion of these issues. Otherwise, a practical person would tell you it would be impossible to get people in any industry to reach a consensus so quickly.

You will recall that I testified on the importance of this range of questions when I appeared before this committee on July 10. Subse-

quent to that, the President held a meeting which included the chairman and ranking minority member of this committee, and subsequently, the President asked me to try to develop such a piece of legislation.

I proceeded to do that, Mr. Chairman, through two forums of discussion—one, direct, informal discussions between representatives of the unions and some of the key employers' associations, and second through discussions in the Committee established by the President, by Executive Order, on Collective Bargaining in Construction. This committee has been meeting weekly, or every other week, throughout this year.

Discussions in that process brought me to the conclusions that I have mentioned.

Now, in any consensus-developing process, as you know, some people would like to go further, and some people would not like to go so far. Nonetheless, in this process, we first set forth in detail a summary of the legislation, the principles upon which people on each side could conduct discussions and express their opinions.

Several weeks ago those principles were discussed within the Committee; they were agreed to by all representatives on both sides within that Committee—the union and the management representatives.

Subsequent to that statement of principles, the summary was released generally throughout the country and the industry.

Subsequently the text of the bill was made available, and I can tell you that, with the exception of one association, the same Committee members, last Friday, all the union and all the management personnel engaged in some collective bargaining, endorsed the bill.

That, Mr. Chairman, is a brief statement of the process by which it was developed.

Third, and last, Mr. Chairman, I will make a brief statement about how it will operate in practice.

As I see it, the bill first of all is designed to provide notice to the national unions and the national employers' associations, of the expiration date of agreements and to provide notice of reopening permitted under collective bargaining agreements, so that they may all know what is going on.

So this procedure would provide that notice would be given from local people on both sides to their national associations or their national unions. The associations or unions in turn would notify the Committee, so that people could know and have a steady record of what is going on.

Second, the Committee would then decide which of these situations it seemed important to get into. Anyone who knows the industry knows that certain agreements are more precedent-setting, have a wider impact, and are followed by other trades and other areas. One would concentrate, it seems to me, instead of selecting all of the 3 to 4,000 agreements a year that might come to the committee, if it and a full review of each agreement, it would select a limited number of key agreements, at the outset. It would probably take jurisdiction of those key agreements.

The second aspect of the legislation is to require an extension of time before a strike or lock-out could take place. In fact, the proposal says "up to 30 days."

This is, in a way, Mr. Chairman, a device to get a problem that had not been resolved locally to the level where national people with national perspectives could look at it. It also gives them time to look at it.

Those timeframes are designed to permit one to look at the same time at a series of interrelated agreements. You can look at all the agreements in Pittsburgh, or you can look at the problems in Buffalo, related to Niagra Falls, a nearby area.

That is a means to group together the key problems for further study.

The third aspect of this machinery, as I see it, is to specify that if the committee wishes, it may ask the national unions and the national employers' associations to participate in settlement, which means that they would enter into the negotiations. They would seek to resolve the dispute. They would use mediation techniques which are almost infinite in their variety, that are now used by skilled persons in mediation.

One might use the Mediation Service, or use the national representatives on each side, or use all three of them. You can bring them to Washington, you can conduct discussions in the field. You can make suggestions or you can make formal recommendations. There are all kinds of mediation devices that those of us who are experienced in the field, I think, would want to use in these cases. Growing out of that process, once the national union and employers are involved in this operation and participating in negotiations, the statute provides that there would be no change in the terms of employment without the approval of the international union.

Let me suggest, finally, Mr. Chairman, this is not a piece of regulatory legislation. It is designed to help the national unions and the national employers' associations, working together, to improve the structure, to improve the procedures, and to improve the results of collective bargaining through the bargaining process itself.

I would like to point out to you that this statute, as we have proposed it, provides for an initial period of five years, with recommendations to be made at the end of that time. I personally feel that it is important to test rather than to, so to speak, establish the proposal on a permanent basis.

I personally believe that keeping a time limit on the legislation will make each side work harder than they might otherwise, and will make it work well.

I recognize that many of my employer friends wish to take this action in perpetuity, so to speak, without time limits, and I respect their conclusions on that, although an overwhelming number of them have agreed that they would endorse the legislation as it now stands.

I think, Mr. Chairman, I perhaps ought to stop at that point, because obviously there are questions in your mind and in the minds of mem-

bers of the committee, and I wish to be responsive to them rather than guess what additional subjects would be most fruitful for comment.

With those remarks, I am available to you for questions.

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

I failed to mention at the outset that you are ably supported at the table by the Solicitor——

Secretary DUNLOP. The Solicitor of Labor, Mr. Kilberg.

The CHAIRMAN. Now, there will be questions. Senator Javits has a request, or a suggestion, perhaps.

Senator JAVITS. Strictly a suggestion.

If agreeable to the members, I would suggest the application of the 10-minute rule.

The CHAIRMAN. I think that wise. We all agree, and so each member will be limited in the first round under the 10-minute rule.

I will not use 10 minutes, and will return to the other members.

I first want to warn you, Mr. Secretary, that it seems to me that everything about this bill represents you and your background and wisdom in your labor-management matters, and you draw on, I guess, decades of working in this area, and through many administrations of National Government, so it is a remarkable background, and it is a remarkable result, in my judgment. I applaud it.

I wonder where some of the problems are in the implementation of the ideas here; I would think that in any situation, the national labor organization would probably be easily defined, and I am wondering whether, on the other side of the equation, the national contractor organization that is logical in any situation, is that easily arrived at?

Secretary DUNLOP. Well, let me comment on that. It is a fair point.

First of all, I repeat the point I made, that the statute does not apply to contractors, or to an association, that is not engaged in the collective-bargaining process.

So that makes the problem somewhat simpler.

Second, the only place where it seems to me, Mr. Chairman, as a practical matter, that one could conceive of a serious problem arising, is with respect to the notice matter, where I think the statute covers that—where an employer, an individual contractor, happens to be the member of several different associations, which is not an unusual circumstance in some branches of the industry.

If it really is an association agreement, then the association, if it is affiliated with a national group, will notify its national group and the national group will notify the Committee.

If it is either an individual contractor, or if it is an association locally that is not affiliated nationally, with any employers' association, then either the contractor alone or the local association will notify the committee directly.

Now, beyond that, I would point out to you, Mr. Chairman, that we have all kinds—and have had over the years—various sorts of committees and various sorts of procedures. We have jurisdictional machinery that works voluntarily in this industry, and the sorting out of the associations has been operative in that field for a long time.

We had the wage-control period and the relative sorting out of each of the associations in that situation has been well established.

For those who have worked in the industry, I would say that I agree that there are a number of different associations, but I do not believe myself that that is a very serious problem.

The CHAIRMAN. The selection of the members of the Committee, the nomination, to the Committee, is the President's authority under this bill, and he can draw on the advice of the organizations—labor and contracting.

Secretary DUNLOP. I am very happy, Mr. Chairman, that you pointed that out.

I myself feel that a committee dedicated to the improvement of collective bargaining in all its facets will only work well if its members have been selected after consultation with those who must live under them, and so it is in this area that the President would consult with all of the national associations, that we know about, and that are engaged in the collective-bargaining process.

Those who are not engaged, from my point of view, are not involved.

But those that are involved, at the national level, would be consulted in the selection of the members, on the employers' side, and similarly the consultation on the union side.

The CHAIRMAN. Well, that seems eminently wise and very fair.

Now, the problems arise, of course, that there can be lack of agreement within the organizations in submitting names. We have been delayed months in some areas where, again, it is only advice that is described in the legislation—advice to the President—that has been bogged down forever. I would hope that this important aspect, that has that degree of importance to all sectors of the industry today, would certainly not get hung up for an inordinate time on advising who they would hope the President would appoint to the Committee.

Secretary DUNLOP. Well, Mr. Chairman, I share your view that it is often impossible to make all mankind happy.

Nonetheless, it is my experience that it would not be difficult in this industry to get very substantial consensus with respect to the composition of the membership on either side.

I might also point out to you, Mr. Chairman, that there is in fact a safety valve there, deliberately written, to provide for alternates, under some circumstances in which it might be appropriate.

Now, let me also point out to you that the statute provides that the Committee will promulgate its rules with respect to such matters as forms, quorum, and subcommittees, or anything of that sort.

The tradition of the committees in this industry, Mr. Chairman, is that only principals participate in the meetings, and I happen to think that this is absolutely essential. The endless development of alternates who are staff people, and so on down the line, in all of my experience is a procedure that dilutes hard decisionmaking and effective mediation.

In the tradition of these committees, the general president on the union side, alone, sits; there is no substitute for him. If he is not there, no one from his staff substitutes for him. There may be an alternate, but it is another general president from another organization.

And on the employer's side, well, it seems to me that that membership ought to be—and I think there is consensus in this—that similarly he should be either the executive officer of one of the associations,

or an individual contractor—the employers' side should be mixed—from an enterprise, a business, having considerable experience in the industry.

Again, if that person cannot personally attend—because continuity in attendance is crucial to this process—then an alternate from another organization attends, rather than permit the substitution down the line of staff.

The CHAIRMAN. Now, I am running to the end of my 10 minutes, so let me just ask, finally, on this round, in the opportunities presented, what do you consider the role to be of the ex officio members of the Committee?

Secretary DUNLOP. Well, Mr. Chairman, I think their functions, as I conceive of them, are essentially two.

On the one hand, the Director of the Mediation Service is to facilitate the use of the Mediation Service and to coordinate the mediating activities of the Committee with the Mediation Service in a variety of ways, that I will not specify here.

Second, the role of the Secretary of Labor, as I see it, is overall, to see that the Committee is performing, to provide for staffing of the Committee, and to see to its kind of administrative housing within the Department of Labor.

The CHAIRMAN. But do the ex officio members do this?

Secretary DUNLOP. They do not vote.

The CHAIRMAN. But can they participate?

Secretary DUNLOP. I would assume the rules would specify—my own hope would be that they would be free to participate in the meetings with the advice and discussion, and knowledge about the industry which both of them—I hope— would have.

The CHAIRMAN. Senator Javits?

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

Mr. Secretary, I have joined with Senator Williams and others on this committee in sponsoring this legislation, because, fundamentally, I believe in it.

But I will say to you, sir, that I believe we should now collaborate very closely in amendments, because I believe there is much particularization in this bill which needs to be spelled out.

I have enormous admiration for you and for your ability in these matters.

But, to calm litigations in order that we don't jump from the frying pan of chaotic bargaining into the fire of a tremendous confrontation, we will have to spell out in much more detail a good deal of this proposal.

I say this preliminarily because I do admire you and I don't want to have you feel that we are challenging your handiwork in any way. Fundamentally, you are right, and I am with you, but I do hope you will bear with us with your usual patience and understanding, as we try to deal with some vexing questions.

Mr. Chairman, I ask unanimous consent that when all members are through questioning, we wrap up whatever is left in a well written package to the Secretary in order that all the nooks and crannies may be explored.

The CHAIRMAN. Yes. I think that is a good suggestion. We will have testimony following yours, Mr. Secretary, that will raise some of the questions and some of the observations made by Senator Javits. This continuing effort to get the best of your thinking on some of that will be a part of this, too, because I know there are many suggested amendments.

Secretary DUNLOP. Mr. Chairman, both I and the staff of the Department will be prepared to labor continuously with the committee and its staff to complete this operation.

Senator JAVITS. Now, second, Mr. Secretary, I certainly agree with you on the critical importance of trying this in this industry. It may very well turn out to be a pattern for others. But, there is no industry that I know of, including automobiles, which is as beaten up by the recession as this one is. The workers are disenfranchised by the lack of work. That is the worst disenfranchisement of all.

It is also an industry in which there has been great experience, through the Construction Industry Stabilization Committee.

Mr. Secretary, I wanted to say is this: I do not intend to belabor the relationship of this bill to the situs picketing bill. The situs picketing bill is intended to give labor a chance, through better organization, to show its best quality, in respect to the productivity of the construction industry. This bill is similarly designed to give employers a chance as well as give the public information as to how to figure a job; what it is going to cost, be completed on time; whether a day's work is going to be done for a day's pay.

I make no apology whatsoever for the fact that we are considering these bills on parallel tracks. It is absolutely essential. I don't speak for anyone else, but I think it is critically important.

Do you wish to make any comment, sir? Well, maybe you had better not.

The last point, Mr. Secretary, is that the critical questions, about this bill are the following: I would like to state them, because you may not have time to answer all of them.

First, what is the wildcat strike situation, in the event that we pass a measure of this general kind?

What happens to a local union seeking to negotiate a contract if it proves to be impossible to do it on a national level. An international can get as unreasonable as a local. We cannot assume in this legislation that only locals will try to make the lush deals, or perhaps, unreasonable deals for themselves.

This is a critical question to me.

Next, does the Committee lose any jurisdiction once it refers a collective bargaining matter to the international, or can it pull back the dispute and thereby act itself, if it does not care for the manner in which the negotiations are being conducted.

Lastly, and very importantly, what about the individual in terms of his status in jurisdictional or grievance disputes? How is that going to be dealt with in the context of this particular situation? And, I left out the problems of unfair labor practices, and the inhibition against discrimination on grounds of race, creed, color or sex, on the theory—I assume—that those jurisdictions will continue unimpaired.

These are the key problems that trouble me, and the remainder of my time you may have for whatever you wish to say on them.

Secretary DUNLOP. Thank you, Senator Javits.

Let me try to respond very quickly to your questions, which are very fair indeed.

First of all, taking the last one, it has been my view, as I testified before the other body, that the National Labor Relations Act, the Unfair Labor Practices provisions of it, on both sides, continue basically unaffected by this legislation, and it was intended that that be so.

Next, on your point about individual grievances and jurisdictions, this bill is designed to have no impact on that at all.

The purpose here is to deal with contracts reopening, collective bargaining agreement reopening, or negotiations surrounding their expiration. The existing law, section in 8(b)4(d) with respect to jurisdictional disputes continues, the existing voluntary machinery on jurisdictional disputes continues—arbitration under local collective bargaining agreements continues, or national collective bargaining agreements on individual cases and disputes, continues unaffected by this legislative arrangement.

This only deals with disputes over the terms of agreements.

Now, going back up to the wildcat strike issue next, if I have my notes right, let me say this: Insofar as one means by the phrase "wildcat strike" a strike over a grievance, then that matter is not a matter before the Committee. That is a dispute, say over a safety matter, or a dispute over—somebody got fired, or that type of issue, as is the case with most wildcat strikes, then the statute does not deal with those problems—only with contract questions.

Insofar as one, however, uses the phrase "wildcat strike" to refer to a strike over contract terms, against the wishes of a national union, where the national union has been requested to participate in the bargaining, which is a different meaning of the phrase, there it seems to me that we are in a situation where the purpose of the machinery does apply. Its purpose is to try to get everyone involved to resolve it—to resolve it by a process which seems to me, Mr. Chairman, and Senator Javits, particularly involved.

This process is the bringing to bear on the problem the best views of all branches in the industry. One of the things that is very important to me in my perception of the problem, is that one can get a long way—which we have not done in the past with the problem with the ironworkers, or the problem with the sheetmetal workers, if you bring them to participate in a meeting in which contractors representing a wide range of crafts and unions, representing a wide range of crafts, are present.

One must then justify his position before his peers. That, it seems to me, is a critical element of this situation.

Is my time up?

Senator JAVITS. But no injunction or penalty?

Secretary DUNLOP. There is no provision in this bill for any injunction or penalty for a wildcat strike.

There is provision in the bill—I have cited it because you asked, so there is no confusion about it—under two kinds of circumstances.

One is the Committee may seek injunctive relief under the circumstance in which people do not give the proper notice, and that is, by the way, the situation presently under the National Labor Relations Act.

And second, if they do not, I guess I should have said "three"; second, if through Committee action, there is a 30-day, or up to 30-day cooling off period, and that is violated, then again, it is like the 60-day period, Senator Javits.

And finally, if terms and conditions of employment are changed without the approval of a national union, then that may apply in those cases.

Those are the cases in which the Committee may seek injunctive relief, but with respect to the wildcat matter that you talk about, absolutely not.

Senator JAVITS. Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. Senator Randolph?

Senator RANDOLPH. Mr. Chairman, I am not being facetious in saying this; do you have any answer to the new type of strike—that is, that of the professional football teams?

Secretary DUNLOP. Well, Senator Randolph, that has not as yet come into the construction industry.

In due course, that is in Mr. Bill Usery's jurisdiction, and I will take it up with him.

Senator RANDOLPH. Well, of course we are speaking about the construction industry and the problems there, and we can all talk about problems within the industry—certainly the Senator from West Virginia is very conscious of the recent strike in the coal mining industry, and you touched upon the fact that local unions sometimes do not follow the national union.

And in that instance, apparently, not even the actual firing of 1 or 2 men, but only their suspension, gave the opportunity for between 85,000 and 90,000 workers to stop the mining of coal—with a resultant loss of approximately 3½ million tons of production.

In the State of West Virginia alone, I would say to Senator Javits especially, because he mentioned this situation—in the State of West Virginia, we lost more than $2 million in taxes, and the people sometimes do not think of the losses that come along—the losses of wages to the miners, and the losses that have accrued, let's say, to the railroads and so many other industries because of that strike.

And I think, Mr. Chairman, that we are approaching a situation in America where, to perhaps use an easy word, we are in a rash of rampant strikes throughout the United States at the present time, covering the broadest type of spectrum, and employee-management problems, I think, are very acute.

I don't have to delineate that which is taking place, but so many more segments—not only the private segment of the society of which we are a part, but public workers, who are connected with various levels of government—are being involved in these matters of very real concern.

As to the stabilization of our country, from the standpoint of productivity—you think this bill, Mr. Secretary, as I understand it, will increase productivity; isn't that what, on balance, you have indicated?

Secretary DUNLOP. Yes; I do. I think in the construction industry, Senator Randolph, we don't have and have not had, the wildcat problems to the degree to which you referred to in another industry. But we have had, because of the fragmented nature of bargaining, a series of rolling strikes, if you will, where one contract expires and that shuts

down a job. While people try to work around that, you get another one—just as happened here in the city of Washington, D.C., throughout the summer. These details are specified in my testimony.

So if we could get a season of steady work, recognizing the importance of the work, we would have much more productivity and lower costs than we would if that season was interrupted by half a dozen series of work stoppages.

Senator RANDOLPH. I think it is very important, when you speak of work to include consideration of lower costs. In other words, the workers would be on the job, and the construction costs would therefore be reduced; is that what you are saying?

Secretary DUNLOP. Yes, sir.

Senator RANDOLPH. And that certainly is true, and it has been proved over and over again, and I sometimes wonder—I wasn't here in 1926 when the original collective bargaining act, the Railroad Labor Act, came into being, but if my memory serves me right, that was the first attempt within the national Congress, really, pointing to the subject of collective bargaining.

I may be in error on that, but I was here in 1935 when we passed the National Labor Relations Act. So we have been at this job now for, let's say, about 50 years in this country. In some ways, perhaps, improvements have been made, perhaps in some ways the answers are not yet present.

But the very complexity in the growth of our industrial system has added, certainly, to these problems that face us, and I am sure—not to say that the members are not very knowledgeable about these problems—but I think the suggestion made by Senator Javits, and I believe Senator Williams has agreed with that procedure, is that we think very carefully in this legislation, which has the cosponsorship of some 11 members, with Senator Williams making a total of 12—so that the language, as presented would not be accepted without question—but the committee members should be very active in reference to whether amendments might be appropriate.

And you have agreed to that procedure; I am sure you feel that give and take in this matter is very important.

Now, a specific question as to a specific date.

Why do you advocate a specific date for the expiration of the act? I know you said so, but I would like further discussion.

Secretary DUNLOP. Senator Randolph, I have two basic reasons for that.

One is that in the origins of our discussions to get consensus within the industry that was necessary. It is, I think, understandable that we are embarking—or proposing to embark—on a novel and new course. There is and has been in this industry, as with most others, enormous distrust of trying to solve problems of collective bargaining by legislation.

My view is that this is not to try to solve the substantive problems of collective bargaining by legislation, but only to improve the procedures by which people will bargain. Because it is therefore innovative, my argument would be that it is important to try it on for size.

The bill as drafted, Senator, provides that at the end of September 1980, as I remember it, the Committee would be required, in addition to annual reports to the Congress, so the Congress would

follow these developments as the Committee could—that it would at that time make specific recommendations as to whether it should be continued, and in what form.

First, my point is that this bill has grown out of the discussions.

Second, and perhaps more importantly, this is a situation, Senator, in which the procedure will only work if the parties in the industry want it to work. If they are resolved not to make it work, on either side, it won't work. And I think we should be candid about that.

This is a process, metaphorically, to bring horses to water, but there is no way to make people agree, in this document. To do so would be to introduce an element of compulsory arbitration, introduce an element of wage controls, or to introduce stabilization, which are not inherent in this bill. I think we would keep the leaders in this industry, on both sides, on their toes, if we tried out for a while.

I have personal confidence in their leadership, and I have confidence in their willingness to do so. That is the reason I have supported the notion for 5 years.

The CHAIRMAN. You might before, say 3 years——

Secretary DUNLOP. Well, Senator, let me say this to you. Since a number of agreements for 3 years are not uncommon in this and other industries, I would hope that the timeframe would be given as five in order to get us over one full cycle of contracts.

Senator RANDOLPH. Because this legislation is before us, and because you have spoken of the industry stability in the fifties and sixties, and now the instability, can you tell us what the reason is for the current situation?

Secretary DUNLOP. Well, there are lots of reasons.

One of them is that the industry had, in particular areas in the late 1960's, very large demands put upon it particularly for industrial construction. There demands required highly skilled manpower, so we had things beginning to move very rapidly, in places like the gulf coast area, the west coast, California, Cleveland, and Detroit areas. Once you get something in motion, it is very hard to stabilize it because the relative wages and relative relationships among crafts and localities come to be crucial.

That is one reason.

A second reason, without taking a lot of time, Senator, is that I think this industry has—as all industries have—had a lot of the problems of our country reflected in its work places. We have gone through a period where all leadership is under question; we have gone through a period in which the demands of people have become very large in many cases, and it seems to me we need to have a period in here of relative stability.

I think myself that the national people are respected by their locals all around, on both sides, and that this will give them the opportunity and the tools to better represent their people.

What we are seeing in this industry, and everyone knows it, Senator, is a situation in which collective bargaining is not only hurting itself by many of the settlements—not only the levels but also the character of the settlements and the strike process—but it is hurting the country at the same time. I think this is designed to bring together the industry to solve the problems better.

I think that is the view of the national leaders on both sides.

Senator RANDOLPH. I will take 30 seconds—I have that much remaining—to ask one question, which is not specific to the bill.

Mr. Secretary, do you believe that workers in the public sector at various levels should have the right to strike?

The CHAIRMAN. We work under no rule of germaneness here.

Senator RANDOLPH. Mr. Chairman, I am in good humor, just as you are, but remember, the only reason this bill is here is because of problems which lend themselves to strikes. Isn't that right, Mr. Secretary? It is all a matter of bargaining, and after you bargain, do you break down, or do you have a strike? And I am talking now about the public workers in various levels of Government, and I am not directing it specifically to teachers, or firemen or policemen, or doctors or nurses within the public domain.

Secretary DUNLOP. Senator Randolph, I would take just a few minutes to answer your question.

I remind you that you have asked me that question, sir.

Senator RANDOLPH. I did, I did ask it before.

Secretary Dunlop. Well, you asked it before when I was up here in February to submit myself for confirmation hearings.

My feelings about that matter have not changed. I responded to you at that time by saying that I had had, in print, a long record of saying that I was not in favor of granting employees in the public sector that right.

I said, however, that that issue had been grossly exaggerated and is out of context, in the sense that that was not the approach to the problem, and it seemed to me that, it wouldn't solve very much.

It seems to me that the proper approach is to be concerned, first of all, with procedures by which all employees, including public employees, can decide by their own choice whether they wished to organize or not.

I have served on a committee in the State of New York to establish a procedure of that sort there, as you know.

I also went on to say that I was aware, as a matter of history, that unless people tended to the underlying problems, there would be strikes, and that that problem was to develop procedures by which people should have the right to organize, and procedures by which controversies could be mediated and resolved.

Senator RANDOLPH. Mr. Secretary, you then told us you believed that public employees should not have the right to strike; is that correct?

Secretary DUNLOP. I said it then; I have said it in print many times. Yes.

Senator RANDOLPH. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Taft?

Senator TAFT. Thank you, Mr. Chairman.

Mr. Secretary, I want to join with those who commend you this morning on your efforts in tackling this very difficult field and the progress that has been shown already in the presentation of this legislation.

Also, I would like to say, like other members, I hope we will have a very full discussion of any possible amendments because it is a very

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complex area. While I know a great deal of thought has been given to it, I think a full airing of alternatives to some of the specific proposals might be helpful.

In that regard let me ask several questions.

First, as to section 4(a) of the act providing the parties shall give at least 60 days notice prior to the notification or termination of a collective bargaining agreement, given the number of extensive contract expirations in the 90-day spring period, is 60 days an ample provision?

Secretary DUNLOP. Senator I think it is because my experience in an earlier committee, the Construction Industry Stabilization Committee, is that if this committee were in operation it would start preparation as early as November through the winter period to get ready for what is essentially a negotiation season that often is concentrated, as your question implies, from April 1 through August. In that process one would pick out, as I indicated earlier, the key cities which are patternmakers in the given year. They are not always the same. The different crafts of the different pattern cities in the year should be visited to do whatever is appropriate to meet with them and to try to work it out.

We did not find this an insoluble problem before and I do not think it is an inherently impossible problem now.

Senator TAFT. Mr. Secretary, also, section 4(a) does not specifically speak of situations where the parties during the term of the agreement open the agreement for further negotiations.

What is your view on specifically defining the opening of an agreement during its life as a modification which would require prior notice to the committee?

You made some mention in passing, I think, of that.

Secretary DUNLOP. Well, it is our intention to cover reopenings.

Let me ask Mr. Kilberg, if I may, Senator, to comment briefly on that.

Mr. KILBERG. Yes.

The language in section 4(a), Senator, is identical in all crucial respects to the language in section 8 of the Taft-Hartley Act, the National Labor Relations Act, as amended. It was intended to be that way. It was intended to encompass all the precedents which have been set under 8(d) of the Taft-Hartley Act.

There was a case that went to the Supreme Court in 1957 under the Taft-Hartley Act which interpreted the 8(d) language to cover wage reopening and so we would expect that this language would be similarly interpreted.

Senator TAFT. While we are on 8(d), let me ask another question of Mr. Kilberg.

I was of the thought that 8(d), a violation of 8(d) would be unfair labor practice not subject to injunctive relief in court. The testimony a few minutes ago seemed to be to the contrary.

Am I incorrect?

Mr. KILBERG. It is an unfair labor practice subject to injunction by the NLRB.

One can imagine a situation where the notice under Taft-Hartley was given to the other side and the 30-day notice in there was given to the Federal Mediation and Conciliation Service. But, where notice

was not given under this statute, that would result in the same kind of injunctive procedures under this act.

Conversely, if notice were given under this act, but not given under 8(d), the 8(d) procedures of Taft-Hartley, the NLRB could seek to enjoin strikers or new collective bargaining agreements during the 60-day preiod.

Senator TAFT. I wonder if you would review that in writing for us and give us a legal opinion on that question?

Mr. KILBERG. Surely.

Senator TAFT. I would like to have it pinned down.

Mr. KILBERG. Sure.

Senator TAFT. Mr. Secretary, section 4(a)(1) and 4(a)(2) provide that the local parties, the union and the contractor association, must give 60 days notice to their national affiliates. In turn section 4(b) requires the nationals to give notice to the Committee but no time requirements are imposed.

What do you think about requiring that notices from the parties shall be filed simultaneously with the Committee and the national labor organizations and national employer associations, assuming affiliation, so the Committee will have maximum time—to consider assuming jurisdiction?

Secretary DUNLOP. Well, Senator, contrary to some of the discussion this morning, I had hoped for a relatively simple bill and questions precisely of the sort you mention might be handled in the rules and procedures which the Committee is empowered to establish under section 3(c) and 4(c).

Now, there is one other response I would like to make to you.

I think it is terribly important, Senator Taft, for the notice of the local union to be served on the international and from the international to the Committee rather than from the local union to the Committee. And it is very important that the local contractors association serve notice on their national association with which they are affiliated and in turn upon the Committee, rather than from the local association directly to the Committee. This has to do with developing responsibility, the basic information systems, and so forth, of the national organization.

Senator TAFT. Well, perhaps then some time limit should be put on that.

Secretary DUNLOP. Yes.

My thought is the rules would do that.

Senator TAFT. While we are on the rulemaking power, under 3(c) is it your understanding that the rulemaking power would be subject to the requirements of the Administrative Procedure Act and, if not, should we not specifically indicate that these are different kinds of animals than the kind that would come under the APA?

Mr. KILBERG. We have had some discussion, Senator, with some members of the staff of this committee as well as the House committee with regard to the question of APA rulemaking.

Our general thinking now is that it ought not to be covered by the Administrative Procedure Act and we are talking to staff of both Senate and House committees with regard to appropriate language to make that clear in the bill.

Senator Taft. Well, the rules and regulations do not have the force of law; is that correct? They are really procedural guidelines for the committee itself.

Mr. Kilberg. That is generally correct. They would be primarily procedural guidelines.

Secretary Dunlop. I thought, Senator, it would relate to questions of how a meeting is called, whether a quorum is called for.

If there were any procedural problems, perhaps they could be spelled out. As a matter of fact, I expect the Committee to reach consensus in 99.99 percent of the cases.

Senator Taft. Thank you.

Mr. Secretary, once the Committee asserts jurisdiction and refers a dispute to a voluntary craft or branch board, would it be a sound idea for the Committee to continue its direct involvement in the dispute or at least maintain oversight over the progress of the negotiations?

Secretary Dunlop. Well, my thinking about that, Senator Taft, is that the Committee would naturally do that. It would require information from the craft board or the branch board.

For example, you might say, we are handling three cases in a locality. We have a craft board out here involving the electricians. We have to coordinate what they are coming out with with the Committee's actions. I would think that would be normal and natural. The top officers of those branches would be in regular attendance once a week, as I perceive it. And that is how that information would be coordinated.

Senator Taft. Once the Committee asserts jurisdiction and requests participation of both the national parties in the local party negotiations, what is the rationale for granting new contract approval authority only to the national construction labor organization? And is a refusal to honor the request by the National Labor and Contracts Association enforceable under any provision of the act.

Secretary Dunlop. Well, Senator Taft, I think I ought to say this to you, as I did publicly at the time the House Members asked me the same question or an analogous question.

I originally started out, Senator, with the notion that there should be a correspondence in the handling of that power on the contractor's side with the labor organization. That was my natural thought. The more I thought of it, the more difficult I thought it was.

As a matter of fact, I originally put to my friends on the contractor's side the notion that I intended to do that and I asked them what they thought about it. After several weeks, they came back and we had a further intensive discussion of this matter, and they reached a conclusion, as I had in the interim, that they were not able to exercise such an authority for the following reasons:

First of all, the national contractors associations are fairly loose federations. Most of them may not have a very clearly defined constitution. Most of them have bylaws. They are not staffed well to do that kind of activity. Maybe over some period of time they will develop the data base and the involvement which will lead to that conclusion. But they reached the conclusion, as I did, Senator Taft, that at this point in history they did not wish it because they could not exercise it.

Senator Taft. Thank you very much.

I think I probably have taken my 10 minutes.

The CHAIRMAN. Senator Hathaway.

Senator HATHAWAY. Mr. Secretary, I agree with the thrust and the purpose of the bill, but I have some questions with respect to certain provisions.

I understand that the Committee's jurisdiction will end at the end of the 90-day period, after which time there would be no jurisdiction.

Secretary DUNLOP. Well, let me say this about that: If one means the kind of informal jurisdiction after the Committee's power to ask for an extension of terms and conditions without strike or lockout this is one thing. Its power to postpone a strike or a lockout is limited to 30 days after the expiration date of the agreement. That is clear. However, as a practical matter, I had never envisioned, nor do I think my colleagues in these discussions envisioned, that the Committee would not be free thereafter to continue its purely mediatory work and coordinating mediation activity with the Mediation Service and coordinating, even more importantly, any given dispute with a whole host of related disputes with craft or locality.

When you say to me its jurisdiction ends at 30 days, I agree that its power to get an extension of work, so to speak, without strike or lockout is limited to 30 days after the expiration, but I do not perceive that its jurisdiction in the sense of its mediatory capacity ends at that time.

Senator HATHAWAY. Perhaps that should be spelled out a little more clearly in the bill. Also, you mention that the jurisdiction of the 90-day period is really 30 days after the termination of the contract.

Secretary DUNLOP. Right.

Senator HATHAWAY. But the way it is phrased in the bill indicates that not to be the case. A labor organization or an employer could notify the Committee, for example, 90 days before the termination of the contract because the bill merely requires 60 days' notice.

Secretary DUNLOP. Well, Senator, we have had very extended discussions on that point in the House, and I think we are very close with committee staff there, and we hope here on language.

Also, we are close with my colleagues from the union and management side.

To make that clear, the intent is the one precisely to eliminate the strike; namely, for 60 days before the contract would otherwise expire or be reopened and for up to 30 days thereafter. That is the intent.

Senator HATHAWAY. I think you may have answered this question already, and I did not hear the entire answer.

What can the Committee actually compel the parties to do?

Secretary DUNLOP. In terms of what the committee's powers are, as I see it, Mr. Chairman and Senator Hathaway, they are as follows:

The Committee is authorized to require these notices of reopening of the agreements or their expiration dates and related information. That would be what the demands are and so forth.

Second, it is authorized to say that although this contract and agreement would otherwise expire on a given date specified, it may provide for a postponement up to 30 days of either a strike or a lockout.

Third, the statute authorizes the international union when it has been asked to participate by the Committee to exercise the authority that changes in conditions of work cannot be made without its authorization.

Fourth, it is authorized to seek relief from the courts with respect to the fulfillment of each of those three.

Senator HATHAWAY. Now, the third one, where is that contained in the bill?

Secretary DUNLOP. Section 5(c).

Senator HATHAWAY. OK. Now, on page 10 of the draft, I have some questions with respect to 8(c). This is the review procedure. It says on the sixth line of subsection (c): "The decision of the Committee to take jurisdiction over a matter * * * shall not be reviewable in any court * * *."

Now, as I understand it from section 5(a), taking jurisdiction is absolutely discretionary.

Secretary DUNLOP. Yes.

Senator HATHAWAY. So, how could you ever have a situation where the Committee took or refused to take jurisdiction over a matter and the parties could take the Committee to court when the Committee is given full discretion as to jurisdiction?

Secretary DUNLOP. I will let Mr. Kilberg describe that, but I think the point is this. Just suppose somebody says you should have taken that case and prevented a strike for 30 days, and because you have not done that, we go to a court to require you to do that. I think it is clear as written that they would be without that power. That suit would be without merit, but the purpose of the language, I think, is justly emphasized.

Mr. KILBERG. That is correct.

What we are attempting to do is what Senator Javits talked about here; that is, to phrase the authority, responsibilities and obligations of the Committee with as much particularity as possible. This is intended to make clear that the Committee does have that discretion to refuse to take jurisdiction over a matter.

Senator HATHAWAY. Well, what bothers me, is if you take sections 5(a) and 8(c) together, then add 6, which sets out the bases for the jurisdiction and says the committee may take jurisdiction only in the following cases, it indicates that "may" is not as "may" as it ought to be because here you may have an appeal from not taking jurisdiction.

Secretary DUNLOP. That is not our intention.

Senator HATHAWAY. All right.

Further on it says, at the end of 8(c):

> Except for a determination of whether the committee acted in excess of its delegated power and contrary to a specific prohibition in this Act.

Should that not be "or" rather than "and"?

In other words, if the Committee acts in excess of its delegated power, the aggrieved party should have ground for obtaining equitable relief. But this section seems to require that in addition to acting in excess of delegated power, a litigant must show that the Committee acted contrary to specific prohibitions of the bill if judicial review is to be obtained.

Mr. KILBERG. I want to take a look at that, Senator. I think your point is well taken. I will take a close look at that.

Senator HATHAWAY. In section 8(d) it states that the only basis for overturning a factual determination is where the Committee's factual determinations are arbitrary or capricious.

Do you not think that is a little strong?

Mr. KILBERG. Well, the reason we used arbitrary or capricious, those are the standards which courts have used where they do not have hearing procedure. There is no requirement for a hearing on the record in this kind of an operation. We do not envision that there will be many hearings, if any, and so it is necessary to have a traditional standard which courts have used in viewing statutes of this kind, which is the constitutional prohibition, arbitrariness, and capriciousness.

Senator HATHAWAY. Do you think hearings on the record would be advisable?

Mr. KILBERG. No.

Secretary DUNLOP. No.

Senator, let me answer that.

Under certain circumstances I think it might be. Under other circumstances it would not be helpful and I think the Committee that is seeking to resolve disputes by consent, by agreements, is a body which will decide under what circumstances it would be helpful and which it would not. Under some circumstances the public exposure of the facts of a dispute are helpful. Under other cases, it is my experience, it is not helpful and it seems to me that the people trying to resolve the dispute ought to have discretion with respect to that.

Let me make a more general comment, Senator Hathaway.

I am happy because I am here before people who are used to framing legislation and passing laws to emphasize or consider carefully these legal matters that we ought to. But, this procedure will work in the end only in accordance with a voluntary kind of mediation with the assistance of national people.

Someone asked me in the drafting of this whether I was interested in subpoena power. I am not interested in subpoena power. If I subpoena a person to come to let me mediate with him, it is almost a contradiction in terms. You can say if you give him subpoena power he comes, but if he says no all the time, that would not help you solve the dispute. This is a situation where you have either got cooperation in working these problems out or you do not have anything. Therefore, I was not interested in subpoena power.

I am happy to have these issues resolved for those who emphasize them strongly and I think it is important to be very clear.

On the other hand, the essence of the matter is the development of a steady rapport and a sense of responsibility, which is the only way these matters will ultimately be resolved.

Senator HATHAWAY. Thank you.

My 10 minutes has expired. I have some additional questions which I will ask during the next round.

The CHAIRMAN. Mr. Stafford.

Senator STAFFORD. Thank you, Mr. Chairman.

Mr. Secretary, at the risk of asking you to repeat something you said earlier or something that is in your printed statement, in con-

nection with S. 2305 of which this Senator is a cosponsor, if this bill becomes the law of the land or something like it does, how specifically would it help a situation like that in Washington where there were rolling strikes last year in the industry and where 21 agreements expire in this current year?

Secretary DUNLOP. Yes; Senator. That is a very good question. It is also one of the situations to which I referred in my testimony in some detail.

Well, let me start with a statement of candor. That is, I cannot assure you of anything. When the task is to persuade people and to set up a framework in which you can better persuade them than you can under other circumstances, there are no guarantees.

Nonetheless, it is very much my experience and it is the judgment of the national union leaders and the national contractors leaders as a whole that the way one would do it would be to say early on in the season, perhaps in this period I refer to from November until February. Look, for example we have 21 agreements expiring this next year in Washington. Let us get all of those people together. Let us find out what the thing looks like ahead in Washington. Let us see if we cannot get some understanding about the sequence in which these things will be taken up. Let us sit down and talk about what is happening to the economy in Washington and what is a good thing to happen there. Let us see which ones are likely to set some patterns. Let us see which ones have special problems, which ones have lagged very far behind because they came off a 3-year agreement and, therefore, can we get some consensus that they are entitled to a little more than which ones have just had 1-year agreements and they are already ahead and we ought to be a little bit more tough on that situation.

By that process with the cooperation of the national people, it is my experience that we ought to be able appreciably to cut down on the range of problems.

Now, second, we can, I hope, over the long term encourage certain branches of the industry to set up their own voluntary arbitration situations. Some of them have them now. In some they are growing. That would be a way in which one could get a higher degree of assurance than the first approach.

Senator STAFFORD. Thank you.

Now, Mr. Secretary, let me address what appears to me to be a main concern of the members of the Associated General Contractors that I have come in contact with in the last couple of months. They seem to be deeply concerned.

Assume there were a dozen contractors at a site and that both the common situs picketing bill and this bill had become the law of the land. Assume of the dozen contractors, 1 was union, the other 11 were not.

The concern seems to be that the union working for 1 of the 12 contractors might strike the entire site under common situs picketing basically as a means of pressuring the other 11 in the going union in their shop operations.

What impact would this bill, if any, have on that sort of situation?

Secretary DUNLOP. Senator Stafford, let me respond to that in a way which I hope is unequivocally clear.

The specific answer to your question is none. This bill before the committee today, which I am testifying for, has to do with collective bargaining structures, procedures in the industry. It has nothing whatever to do with situs picketing.

I would also say to you, Senator, so the record is clear, I did not take the time to elaborate this in response to Senator Javits' invitation to me to comment on a rather complicated range of issues, but I have said in every forum and that is why I want to say it here, that I know that all, all, of my contractor association friends from each of the associations very strongly oppose the situs picketing or equal opportunity bill for construction. Their views about that are in no way affected by their endorsement of the collective bargaining bill which is before us, on which I am testifying today.

Now, I state that categorically.

Finally, Senator Stafford, I think I ought to say to you that it is the view of all of my contractor association friends and all of my union leader friends that these are two separate pieces of legislation.

Senator STAFFORD. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Laxalt.

Senator LAXALT. Mr. Secretary, you have indicated throughout your remarks that the success or failure of this legislation will depend in great part upon the spirit in which the people involved will approach the problem.

I gather from your remarks that the major contracting groups in which you have been in contact are in favor of this piece of legislation.

Secretary DUNLOP. That is correct, Senator, and I believe Mr. Harry Taylor will so testify before the committee.

It is my understanding that, though again I repeat all of these gentlemen are much more able to speak for themselves, President Georgine, I believe, testified before the House and is prepared to testify here that they endorse the bill, and I believe President Meany endorses the bill.

I will not hide from you the fact that one national association engaged in collective bargaining, national association engaged in collective bargaining, has not seen fit to endorse the bill.

Now, I use those words very carefully.

Senator LAXALT. All right.

What expression or opinion, if any, have you people received from the local unions?

Secretary DUNLOP. Well, Senator, I have not taken the time, nor do I think it is appropriate, to make any systematic canvass of such opinion. I think that is a question that is more appropriate to ask of the spokesman for the union side.

I would say to you that in my experience in recent years there is a widespread understanding, a growing understanding among local union officers that the present experience is somewhat out of hand and something needs to be done about it. The recent experiences with rolling strikes and distorted settlements which feed on each other, have created a situation in which many local leaders with whom I have

talked, recognize that these arrangements and conditions, are not in the best interest—long run interest—of the industry.

Senator LAXALT. But, in those discussions have they indicated that this is the best method in which to solve their difficulties?

Secretary DUNLOP. I did not discuss, Senator, this particular piece of legislation with them because, as I say, I had not formulated it at that time, although I am saying there is widespread recognition that something needs to be done.

Senator LAXALT. There is no question about the fact that the rights of the local unions are going to be very substantially impacted by this legislation.

Secretary DUNLOP. Well, Senator, let me talk a little bit about that.

Are you aware, or I will assert it as a fact, that the members of these unions are first members of their national union.

Senator LAXALT. I am aware of that.

Secretary DUNLOP. You should know, as I am sure you may, that over 100 years it was the problem of the traveling member which created these national unions fundamentally. That is, the national unions arose and the members joined the national unions in order to take care of the problems of an industry in which work was migratory and in which contractors were migratory and in which workers were migratory. Therefore, there have always been conflicts between local people who only live in a locality and members and contractors. The goal of the national union is to resolve these disputes, and I look at this matter as a continuation of that tradition.

Senator LAXALT. Nonetheless, the local unions in the construction industry tend to be very jealous of their prerogative; do they not?

Secretary DUNLOP. Yes. I suppose that is true. But, let me remind you no local union has any authority over its work jurisdiction. That is without peradventure of doubt a property of the national union and has always been so regarded in the industry, Senator.

Senator LAXALT. But, would this legislation have any effect on the independent unions?

Secretary DUNLOP. Just so you and I understand the meaning of independent union, I answer your question "No" and I repeat the statement I made at the outset, Senator, that it only applies to what I have called the standard national construction labor organizations and their affiliates and other subordinate bodies. By that I mean the 17 national unions affiliated with the building and construction trades department of the AFL–CIO plus the International Brotherhood of Teamsters.

Senator LAXALT. What effect, if any, would this legislation have on nonunionized construction workers?

Secretary DUNLOP. Absolutely none.

Senator LAXALT. You have indicated that the thrust of this legislation is the parties affected act in a spirit of voluntary cooperation.

Secretary DUNLOP. In the main, yes.

Senator LAXALT. We have talked about rapport and you made reference to the effect that you can lead horses to the water, but you cannot make them drink.

Secretary DUNLOP. Well, that is true.

Senator LAXALT. What is there in this legislation that would facilitate the settlement of disputes other than what you have indicated?

Secretary DUNLOP. Well, I do not know of anything other than what I have indicated.

But, you see, Senator, it is my view that the structure of bargaining makes an impact on both the frequency of strikes and lockouts and it also makes a difference as to the quality of the settlement. That is true I think in all industries, but it is peculiarly true in this industry with its highly fragmented bargaining to which the chairman referred at the outset.

Senator LAXALT. Do not misunderstand the tenor of my questioning. I think your general approach is most laudable. But, quite frankly, I have a front end problem as to whether we need any legislation at all.

If you take the problem of this kind and if you take as a premise that if it is going to work it is going to work only with the solid cooperation of those affected, why cannot that be done internally on a voluntary basis?

Secretary DUNLOP. Well, that is a very fair question, Senator. I think my answer to that question, in candor, is that I and many others associated with this industry over many years have held that point of view until recently. We have come reluctantly to the conclusion that some assistance by legislation is essential with limited compulsion elements, which I reviewed with Senator Hathaway a moment ago, in order to make for a more effective and responsible kind of collective bargaining.

I think the situation is that the parties on each side in many localities are so fragmented that it is impossible for them voluntarily to do this. I personally wish it were possible. But, I am saying to you in all candor that it is not possible.

Senator LAXALT. Well, is this a new development?

Secretary DUNLOP. This has been true, Senator, in my personal judgment, since about 1965.

Senator LAXALT. To me this is a very comprehensive and substantial piece of legislation.

Is it not?

It is certainly approached in your department as such; is it not?

Secretary DUNLOP. Well, let me answer that.

I think it is an important piece of legislation, Senator. I do not regard it as comprehensive.

A good many of my employer friends in the industry are of the view that they would like to have something which goes much more extensively. I do not know if they mean in the common interest in trying to make the statute a permanent piece of legislation. I refer to various attempts at what is, in effect, a form of compulsory arbitration or a committee with power to make final decisions, which might well be a form of wage control and other such proposals.

So, I am not suggesting to you, Senator, that this is a comprehensive piece of legislation. It is significant. It is designed to try to make collective bargaining work better in this industry, but it is not a piece of legislation which deals with a great many more fundamental issues in the industry.

As a matter of fact, the principal criticism that I have seen of this piece of legislation in print are from some people who will say it is

fine as far as it goes, but it does not go beyond dealing with a number of fundamental features of the industry which they think needed attention.

So, in that sense—I want to be clear, Senator—I think it is an important piece of legislation, but it is narrow in its purpose. Its purpose is to try to make voluntary collective-bargaining processes work much better.

Senator LAXALT. I understand.

In view of that then, do you view the passage of this legislation to be urgent in nature?

Secretary DUNLOP. Yes; I do, and let me explain why.

I think it is terribly important that we get geared up to do this. It takes time to put together a committee. It takes time to gather the wage data. It takes time to get ourselves in a position so that we can take the time between bargaining seasons to be better ready for the future.

Senator LAXALT. One last question or two in connection with the relationship of this piece of legislation to common situs.

Secretary DUNLOP. Yes, sir.

Senator LAXALT. I gather you have indicated that there is no relationship.

Secretary DUNLOP. What I have said, Senator, is that in the view of my labor friends, my management friends, and I may say in my view, the two are unrelated.

I am aware that Members of Congress and the President have on occasion put them together. That was not my position.

Senator LAXALT. Well, tell me this: If this legislation should be favorably considered by this committee and presented with common situs to the Senate as a package, would you anticipate a lessening of opposition from management?

Secretary DUNLOP. I have responded, I think, already to that question, Senator. I have said to you because I want to be absolutely candid, I have said earlier this morning that it is the view, as reported to me on numerous occasions, numerous meetings which I have held with my employer friends, that they are hostile to the situs picketing bill in whatever package it comes.

Senator LAXALT. I think my time has expired, Mr. Chairman.

Thank you, Mr. Secretary.

The CHAIRMAN. We will start around again.

Mr. Secretary, this has been, I am sure, most productive and it will be very useful to other members of the committee and indeed to the Senate, too.

I just wonder if you could, for our record, give us a little history on the industrywide bargaining and manufacturing where the Nation dealt with a fragmented situation and came out of that jungle of local autonomy and bargaining and put that on an industrywide basis and what the effect of that has been in manufacturing.

Secretary DUNLOP. Well, Senator, there is in the history of collective bargaining looked at over a period of 150 years a number of industries nationwide where bargaining developed.

Also, one might more appropriately use the phrase in a more generic sense marketwide bargaining because for some markets there is a

national market and in other places there are regional markets and other places local markets.

Let me illustrate.

In the early pottery industry, and more recently in what is called the basic steel industry, they are developing industrywide bargaining.

By the way, such developments, I believe, are not the result of decisions of Government tribunals, but are the results really of development by the parties.

In the steel industry, for example, the certifications are limited to individual production and maintenance units and yet the parties in the steel industry have developed multicompany and company bargaining, which is called nationwide after the 30's.

Now, I want to contrast that with this, Mr. Chairman, this is not an attempt to propose nationwide bargaining in the construction industry in any sense.

The CHAIRMAN. That was to be my question after getting a little of the history; what it has meant to have industrywide bargaining to some degree in manufacturing. I think that has had, nationally, a beneficial effect.

Secretary DUNLOP. That is often said to be the case.

The CHAIRMAN. I just wondered whether some of the spirit of that is not included in this again; it is only the spirit; it is certainly not any compulsion, but some of the spirit is embodied in this; and the hope of the result that will come from this is the organization or the mechanisms that are created under this bill.

Secretary DUNLOP. Well, I would say this: We already have, Mr. Chairman, in some branches of the construction industry, nationwide bargaining in the sense that it is used in manufacturing. My testimony refers to it.

For example, in the elevator branch of the industry, and in the pipeline branch of the industry, there are nationwide and substantive agreements negotiated.

The CHAIRMAN. Is one of the trades the electrical trade?

Secretary DUNLOP. In electric transmission, across country power lines, we have large regional negotiations there. But, for most building and housing and industrial plants, for most crafts, we have local or regional State bargaining.

What this bill would do is introduce a national concern about procedure for dispute settlement. It would introduce perhaps eventually some standardization of certain kinds of work which needed work rules and procedures of that sort, where appropriate.

However, it would more likely tend to address the geographical scope of bargaining and the timing of agreements. It would introduce a national presence in the dispute resolution. But, that is very different from nationwide bargaining.

The CHAIRMAN. No guarantees of results, but some high degree of probability given cooperative attitudes that it will live in the whole business and collective bargaining results in construction trades.

Secretary DUNLOP. Yes, Mr. Chairman, with a lot of hard work.

The CHAIRMAN. Now, as you know, we introduced and held hearings on S. 1479. That is the situs picketing bill, of course.

When you came here to testify, at the end of your testimony you introduced the idea of desirability.

Secretary DUNLOP. Yes.

The CHAIRMAN. That has culminated in the bill that is before us, S. 2305. That registered most favorably here as a philosophical suggestion as you testified on situs picketing, S. 1479.

Secretary DUNLOP. Yes, sir.

The CHAIRMAN. It was certainly the feeling here, I know it was my feeling, that we would proceed with S. 1479. Then it developed there was going to be legislation to implement the philosophy of your testimony in this regard on the collective bargaining procedures. We thought we would proceed seriatum here because we had a bill in being. There was no other bill in being. Then in the evolution we had meetings with you and with the President and then these were drawn together in discussion and I think logically we are dealing with one area of industrial life; the construction industry.

So, as we dealt with it in discussion, we have these matters now before us at the same time. S. 1479 has moved through the committee up to our report and filing. Now we have this bill.

As I read the statement, the President links them in terms of acceptance from the administration's standpoint while they are not related in operational effect. The President's attitude, as I read it, is that we are dealing with one industry, two bills, and they should come to him together.

Is that what he said in Milwaukee?

Secretary DUNLOP. I would like to perhaps introduce the precise words he used for the purposes of the record.

But, that is a very reasonable paraphrasing.

Senator JAVITS. I ask unanimous consent that the precise words be inserted at this point.

[The document referred to follows:]

[From Presidential Documents: Gerald R. Ford, 1975, Aug. 25, 1975, p. 909]

SITUS PICKETING LEGISLATION

Q. Mr. President, one of the job bills or one of the bills that the construction industry here in the State of Wisconsin is vitally interested in is Senate bill 1479, which many of the contractors seem to feel would provide for an illegal secondary boycott. There have been some direct appeals, I know, to your office on 1479. Have you reviewed the bill? Have you made any kind of decision as to whether you will veto that bill or let it go by?

The PRESIDENT. About 3 months ago, Secretary of Labor Dunlop appeared before the House and Senate Committees on Education and Welfare, and he testified that if the original so-called situs picketing bill were modified with three amendments—at least two amendments—it would be acceptable.

One of those amendments would provide that before you could have on-site picketing, it would require a 10-day cooling off period.

The second provision that would be mandatory as a part of the bill would be that no local could go on strike under those conditions without having gotten prior approval from the international.

Now, in my opinion, those two added amendments would make that bill acceptable, plus one other factor: There is also a bill that the Secretary of Labor is working on, with both management and labor, which in effect provides that there shall be greater responsibility for both labor and management on strikes and lockouts.

If that second bill comes to the White House with the original bill plus those two amendments, then I think we have put together, working with management and labor and the Congress, an acceptable solution to this long-standing conflict.

The CHAIRMAN. And the conclusion, as they say, some say, the bottom line is the President supports those bills.

Is that it?

Secretary DUNLOP. He has said—the words, as I said, as the Senator said, speak for themselves.

I think he used the words "'acceptable to him."

Isn't that the language, Senator?

Senator JAVITS. He calls it an acceptable solution.

But, the situs picketing includes two amendments which you have proposed.

Secretary DUNLOP. That is correct, sir.

Senator LAXALT. Is that acceptable as a package or individually?

The CHAIRMAN. Was that a question?

Senator LAXALT. Yes, if I may, Mr. Chairman.

Senator JAVITS. Mr. Chairman, could I just add to that question? The "package" being two separate bills which legally he can accept or reject separately. I gather, Senator Laxalt, that is your question.

But, from his expression, how does the Secretary interpret the President's expression?

Secretary DUNLOP. Well, Senator, I am not about to interpret the President's words without further discussion. I think that those words speak for themselves.

It is clear that if the two come to him and he said he supports them he will find them acceptable.

Now, if you ask me the question of what happens if they do not come together, I guess I have learned not to answer all the hypothetical questions that come before me.

The CHAIRMAN. We could have greater latitude to interpret the President.

I interpret it this way: He does not want us trooping down there twice for bill signings.

Senator Javits.

Senator JAVITS. Mr. Secretary, when you say "find acceptable," using the President's words, and "acceptable solution," we know there are various degrees of White House support. Are you able to say that the administration will actively seek in the Congress the passage of both these bills relatively contemporaneously?

Secretary DUNLOP. I would like to seek instructions on that particular form of the question.

I have testified before this committee before, Senator Javits, in support of the earlier bill with the amendment that I proposed and I said to this committe then, which was correct, that I had been specifically and personally authorized by the President of the United States to make that testimony. I have had those instructions changed in no way since that time.

You asked me a further question. I have not addressed that question with the President and I shall seek an opportunity to do so.

Senator JAVITS. Good.

Would you let us know what you say to him?

I do not want to pin anything on the President.

Secretary DUNLOP. Yes.

Senator JAVITS. OK.

The other thing I would like to ask you is this. I understand that the questions which have been asked by my colleagues and myself have pretty thoroughly explored the situation with one point still left unanswered.

That is, there is an immunity granted against "any criminal or civil liability arising out of a request by the committee for its"—to wit, an international union—"participation in collective bargaining negotiations, participation in collective bargaining negotiations or the approval or refusal to approve a collective bargaining agreement."

Now, obviously, that refers to antitrust. But, what else does it refer to and are you able to tell us what is the ambit of that provision?

Secretary DUNLOP. Well, let me give you a brief answer and then ask Mr. Kilberg to respond directly to you, Senator.

My thought about it, and I think the thoughts of the management and labor people with whom I have consulted, is rather simple. If you are asking people to come in and help resolve a dispute, that act should not subject them to liability solely because they have been trying to be responsive to the committee's urgent request that they help resolve the terms of this agreement.

Now, more specifically what it means.

We, in our discussion, had not so much thought of antitrust, although Mr. Kilberg may respond to that, but as to various kinds of damage arrangements that might be talked about. In practical terms, if the national union called a strike itself, it should be responsible for that. But, in trying to resolve the strike on the part of the local people, it should not suffer damages by virtue of its involvement at the committee's request to resolve the dispute.

Now, that is the commonsense side of it. There are legal problems of language here, which, I confess to, Senator, and I would like Mr. Kilberg to respond.

Mr. KILBERG. The Secretary's statement is accurate in terms of what we are intending to do here.

It does affect, obviously, as you pointed out, some potential antitrust actions. That is one purpose of the phraseology used.

We are also aware of the situation whereby an international union may be charged with a refusal to bargain under 8(b)(5) of the National Labor Relations Act for refusing to approve a collective bargaining agreement.

While we would not preempt the jurisdiction of the NLRB, our intent here is that the same kind of protection flow to the international as I understand flows when its own constitution provides that it must approve a local agreement before it may go into effect. It is not our intent to add protections to an international union or national employer association which either of them presently does not have under the Civil Rights Act of 1964, under the Landrum-Griffin Act, and under the National Labor Relations Act, as amended. It is only our intent to insure that international unions and employer associations not be subject to any greater liability than they presently have under the cited statutes, because of the cooperation under the provisions of this statute.

Senator JAVITS. Is it your intention to give any immunity to the local?

Mr. KILBERG. No.

Senator JAVITS. In other words, suppose the local alleges that a certain provision was insisted on by the international. You know, it tries to hold itself harmless of something which is illegal. As the Secretary says, you do not give them immunity.

Mr. KILBERG. In the situation which we expect might come up that presently exists where an international has authority in its constitution to review a collective bargaining agreement, we are informed that a local is not held liable for a refusal or for its failure to enter into an agreement where the international has not approved an agreement. We would assume the same would hold true given this law where we do not give specific immunity to a local union.

The local union enters into a collective bargaining agreement, provisions of which are held to be unlawful, and then it has the same liability it would ordinarily have.

Senator JAVITS. There is nothing here that compels the local to agree.

Mr. KILBERG. That is correct.

Senator JAVITS. In other words, the international must approve, if it is called in under this law, but it cannot compel a local to agree.

Mr. KILBERG. That is correct.

Senator JAVITS. And as to its right to strike, if it fails to agree, the Secretary has already spelled that out.

Mr. KILBERG. That is correct.

Senator JAVITS. Now, this bill, in your judgment, does not say what you two gentlemen say it says. Do you stand by the bill or do you stand by your explanation?

Mr. KILBERG. I stand by my explanation. My explanation is what is intended to be meant by the language of the bill.

Senator JAVITS. So, if we disagree, do you understand that we will amend and still be within the recommendations of the department?

Mr. KILBERG. Obviously, I want to look at anything.

Senator JAVITS. I understand that.

Mr. KILBERG. Just as people disagree with the language we have written, so we can disagree with the language somebody else writes.

Senator JAVITS. What you have said is what you want expressed in the legislation?

Mr. KILBERG. That is correct.

We are prepared to work with counsel for the committee, majority and minority side, if amendatory language is suggested to us.

Senator JAVITS. Do you concur with that, Mr. Secretary?

Secretary DUNLOP. I do.

Senator JAVITS. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Hathaway.

Senator HATHAWAY. Thank you, Mr. Chairman.

Mr. Secretary, I do have a few questions and comments of a technical nature, which I will submit to you in writing, if you do not mind, and it will save time here.

With respect to the relationship of this act to the National Labor Relations Act, would you say that it would be the basis for an unfair labor practice, under the NLRA, if any of the parties, after they were notified by the committee to sit down and discuss the coming contract, refused to come in? Would you say that that constituted not bargaining in good faith?

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Secretary Dunlop. No. I would not say so.

Senator Hathaway. You would not say so?

Secretary Dunlop. I would not say so.

It is not my intention, Senator, to change the National Labor Relations Act and its administration in this situation.

Senator Hathaway. No. This would not change it.

Would you say that failing to come in, under this bill, would constitute bargaining in good faith?

Secretary Dunlop. Well, I am happy to hear what Mr. Kilberg has to say about it, but let me put it this way: No more than at the present time has the Federal Mediation and Conciliation Service asked somebody to come in and they did not come in. Whatever the status of that situation is under the law, and Mr. Kilberg, I am sure, can tell you, whatever the status of that would be under the statute, that is the intention to apply here. It is in no way going to change independently.

Senator Hathaway. That is your understanding also?

Mr. Kilberg. That is exactly what I was going to say.

In fact, there have been relatively few cases arising under the National Labor Relations Act with regard to the Federal Mediation and Conciliation Service calling a meeting and a party refusing to attend. In those cases where that issue has arisen the courts have held that that refusal is not in and of itself a prima facie case making out a refusal to bargain. However, that refusal. along with other activities of the party, may be found to be an unfair labor practice and that is a refusal to bargain in good faith.

We would expect that the Board would look at this set of activities and the courts the same way in that light.

Senator Hathaway. So, if the parties were not negotiating with one another at all and you called them in and they refused to come in, I suppose that could constitute a basis for an unfair labor practice charge?

Secretary Dunlop. Well, Senator, lawyers and the courts go around finding out what people have to bargain in good faith. I happen to think that was a mistake, in my opinion, because when you get all done the answer is it has to be settled across the table and of all the futile things that happen in life in this field, Senator, I know nothing more futile than those kinds of decisions. But, that is a personal view of mine based on many years of trying to settle problems.

The point that I want to emphasize to you is that there is no intention in this thing to encourage parties or people to use the procedures of the NLRB for those purposes. This is essentially a mediation process.

Senator Hathaway. I see.

Thank you very much, Mr. Secretary.

Thank you, Mr. Chairman.

The Chairman. Senator Taft.

Senator Taft. Mr. Secretary, in talking about the common situs picketing bill, you have made mention of the two amendments.

Secretary Dunlop. Yes.

Senator Taft. I take it the amendments you are referring to include the conditions that Secretary Shultz first testified to and which you included in your earlier testimony?

Secretary Dunlop. No.

Senator Taft, over and above a number of suggestions which Secretary Shultz made to the Congress, he had a general idea which said that you try to encourage certain voluntary aspects.

When I testified before this committee on July 10, I said that over and above the suggestions that had previously been made, I thought the committee ought to give consideration to four possible further amendments. I repeat again that those four were specifically personally authorized by the President for this committee and they were that there should be a minimum of 10 days notice, you will recall; a period of 30 days maximum; a requirement that the national union authorize any such picketing; and, finally, a suggestion that perhaps consideration might be given to an arbitration or neutral procedure with respect to ruling on such a request for the use of that picketing.

You will recall, Senator, that the congressional committees found some merit in tow of those four—the 10-day notice and the requirement for the authorization by the national union; and did not find merit in the other two.

One of them, I confess, the requirement for arbitration, ran into some legal snags, in my own further reflection, about the matter of the delineation of authority. It was the Schecter case type of problem.

So, in the end the two committees added these two elements; the 10-day notice as mandatory and the requirement as mandatory for the national union's authorization.

The President indicated that those two conditions were acceptable to him.

Senator TAFT. In the original discussion by Secretary Shultz there was mention that protection for independent unions was necessary.

Secretary DUNLOP. Yes.

Senator TAFT. Do you have any feelings about that? Do you have any feelings about how that may or may not be done insofar as common situs picketing is concerned?

Secretary DUNLOP. Well, perhaps I ought to reflect a little more on your question, but I think there are two comments to make.

First of all, at the time in 1969 when Secretary Shultz was testifying, District 50 of Mine Workers was a fairly appreciable factor in certain branches and certain areas of construction. Since that time they have affiliated, as you are aware, I believe, with the Steelworkers Union and the problem between that situation and the building trades is now more susceptible to resolution under the internal procedures of the federation and that problem is nowhere near the size of what it was then.

I confess that there remain a few independent unions in some localities in the United States.

My own judgment about that situation is that it is a relatively minor matter in the total situation. It is less significant than it was.

Senator TAFT. You testified earlier that there was no impact upon independent unions insofar as this bill is concerned.

Secretary DUNLOP. This bill has absolutely no application to any unions other than those I specified and, therefore, has no application to what is generally understood to be independent unions—certainly independent unions in this industry—or to other national unions which might have some collective bargaining agreement.

Suppose, for example, the oil, gas, chemical, or, you name them, unions had contract agreements covering construction contracts. This bill would not apply.

Senator TAFT. Do you think it would be appropriate to allow such unions and the employers with whom they deal to bring in the committee if they wished to do so?

Secretary DUNLOP. I would have thought not, Senator. Their approach to these matters, I think, is so different, as I know it, and, second, the Mediation Service by itself is there to deal with those questions, and it is really the interdependencies within the normal construction industry—understood to be the construction contractors and these unions—that constitutes our central problem.

Senator TAFT. Recently, Mr. Secretary, in the National Labor Relations Board case involving the United Associations of Plumbers and Pipefitters, Local 630, and Lein and Stenberg, the Board, in effect, held that under the nonprofit hospital bill that we passed last year building trades picketing was covered because we used the words "at a hospital."

Do you think in this legislation we might undertake to try to correct that situation?

Secretary DUNLOP. Senator Taft, you are so much more an expert on the subject of hospitals than I am as they relate to construction, that I would hesitate to say anything about that.

I noticed that. I did not know quite what to make of it, to be candid.

Senator TAFT. I did not either.

Mr. Secretary, or maybe Mr. Kilberg would have this one, under section 8(d) of this bill there is a mention of petitioning the court.

Who is going to actually do the petitioning? It does not sound as though the committee is.

Is it you? Are you going to be the one or is the general counsel of NLRB?

Who actually goes in and does it?

Mr. KILBERG. It would probably be the Department of Justice. The committee would direct, and since in an early provision of the bill we indicated the Department of Labor would provide staffing to the committee, the committee would be housed in the Department of Labor, it would be the Department of Labor attorneys who would do the day-to-day legal support for the committee. However, when it comes to appearances in court, since there is no language in this bill, the normal provision is that the Department of Justice represents the U.S. Government in litigation before the Federal district courts, and courts of appeal.

Senator TAFT. It is my understanding that this bill is designed to help hold the line on inflationary wage settlements which have afflicted the building industry for a number of years.

Is there a direct reference in the bill on this point?

Secretary DUNLOP. I am not quite clear, Senator, on what you said.

We did prepare an inflation impact statement as required under our OMB regulation with respect to all such legislation.

Senator TAFT. Yes.

Secretary DUNLOP. That I did prepare.

Senator TAFT. That is not what I am talking about.

Secretary DUNLOP. What?

You are talking about the bill itself?

Senator TAFT. Mention of the inflationary wage settlement as being one of the reasons for the rationale of the bill.

Secretary DUNLOP. Well, Senator, let me say this: If you will look at section 6, which sets forth standards for the committee action, it would be my view that that language, which is not expressed in those terms, has that effect.

Let me put it this way to you. The principal way in which inflationary developments have risen is because of the tendency to leapfrog by one craft or area that feels that it should get a little more than somebody else and to do that by the use of disputes or stoppages. Insofar as one can cut that down, one is making a contribution toward both stability of bargaining and a more regular and less inflationary pattern of behavior.

But, I have chosen for a variety of reasons to express that thought in the language of section 6 rather than in the words which you used.

Senator TAFT. What is your feeling, Mr. Secretary, on having the committee established by this act study the desirability of having a plan or plans for multicraft coordinated construction bargaining as another step in alleviating the industry's problem?

Secretary DUNLOP. Well, Senator, I think it is fair to say that the thoughts behind the words you use are explicitly referred to in section 6. The reason I myself did not use this precise language that you have is that because I do not believe that in all circumstances that is useful, nor do I agree that all expiration dates in each locality should be the same. But, I do think that the conglomerate of expiration dates as set forth in section 6, paragraph 3, and the geographical area as also mentioned in that section—section 6(a)—are very important ingredients of the idea that you talk about.

I only did not use your words, Senator, because to some people that is an unhappy set of words, and I do not myself believe that such ideas are universally or generally applicable. They are in many cases.

Senator TAFT. Just one final question, Mr. Secretary. You have been very generous with your time.

Does the bill authorize local parties to request that the committee take jurisdiction in situations when one or more of the standards outlined in section 6 apply and, if not, should there be such an authorization?

Secretary DUNLOP. There is nothing explicitly in the bill, nor do I think it is necessary.

They could, of course, ask the committee and the committee, I think, would take it under account, more likely talk to the appropriate national people to make sure it made sense. No problem.

Senator TAFT. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Any final questions?

Senator LAXALT. Just a few short questions.

Secretary DUNLOP. Yes, Senator.

Senator LAXALT. Under the provisions of the bill there is reference made that one of the bill's purposes is to bring about construction bargaining in more appropriate geographic areas.

Secretary DUNLOP. Yes.

Senator LAXALT. You indicated previously that there is no connection whatsoever between this bill and the NLRA, it does not affect NLRA.

Secretary DUNLOP. Yes, that is generally correct.

Senator LAXALT. So, I gather from that, that there would be no effect of this bill as to the present authority of the NLRB with respect to bargaining units.

Secretary DUNLOP. That is generally correct, although let me say this, contrary to most people's understanding, collective bargaining in the construction industry does not operate through elections. There are a few elections held by the NLRB, but the existing collective bargaining arrangements in the industry do not grow out of certifications. As a matter of fact, I only know of one areawide certification which I myself helped to arrange in 1948.

There is the heavy highway agreement of western Pennsylvania. The NLRB has certified individual projects or individual contractors with that kind of situation, but I happen to think that that fundamentally is one of our problems in this industry to which this bill does not address itself. Namely, there is no way in which to determine the kind of appropriate unit for representation as there is in every other industry. Some day we may want to come back to that problem. Someday we may want to talk about the process which employer groups are appropriately certified by. That is another day, another problem, and I do not want to get that mixed up with this. They have had no practical consequence in this industry at all.

Senator LAXALT. Now, there is a provision here for granting immunity to standard national labor organizations in connection with participation in the activities of the committee.

Would you have any objection to granting that same immunity to the locals?

Secretary DUNLOP. I thought Mr. Kilberg testified that would not be affected, but let him respond to it.

Mr. KILBERG. I am not sure what purpose that would serve, Senator. We would not want to remove liability from parties for things for which they are presently liable under other statutes and for which they ought to be liable.

Senator LAXALT. Might they not conceivably be parties to these negotiations and deliberations in a given case?

Mr. KILBERG. They would have to be parties. They would have to be parties to any contract which those negotiations resulted in.

The international and national employers association would not themselves have to be parties to the contract. The local union would be.

Secretary DUNLOP. That varies.

Senator LAXALT. But, to the extent of their participation I can conceive of that happening with the committee.

Should there not be immunity extended to that particular participation irrespective of the contract?

Secretary DUNLOP. Well, Senator, let me respond to it this way: I am not a lawyer and I am sure that counsel for the committee and Mr. Kilberg can work on that with counsels for the parties. I do not perceive, as a practical matter, of any way in which their participation in the work of the committee would make them in any way liable for what they are not now liable.

So, in other words, the reason for including the nationals is that we are asking them to do things that they might not otherwise do. For that activity we wish to hold them harmless.

With respect to the locals, we are not asking them to do things which they would not ordinarily be doing anyway and, therefore, we think no change is necessary.

Senator LAXALT. Let me ask about the committee. Presently it is 23.

Secretary DUNLOP. Up to 23, yes, sir.

Senator LAXALT. Twenty of whom are composed of people directly involved who, obviously, have a special interest in the situation.

Secretary DUNLOP. Yes.

Senator LAXALT. Do you think that three coming from the public is adequate representation from the standpoint of the public interest?

Secretary DUNLOP. Plus the Secretary of Labor and the director of the Mediation Service.

Senator LAXALT. Yes. But they are in an ex officio capacity in terms of this bill.

Secretary DUNLOP. That is correct.

Senator, I really do think that because I believe it is in the public interest to improve the processes and procedures of bargaining in this industry. Instead of taking that as it comes to the public interest, I think it is urgently in the public interest. If I may say so a little bit facetiously, I think three good neutrals are equal to any group of parties that you may put together.

Senator LAXALT. You may be right.

Last, has anybody in the department costed out the administration of this bill?

I notice you have left it open.

Secretary DUNLOP. Yes, sir. We have. Indeed we have.

The answer to that question is somewhere between $400,000 and $500,000 a year as a maximum, including the cost of data collection and so forth.

Senator LAXALT. Thank you, gentlemen.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Dunlop follows:]

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

September 16, 1975

Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear before you today to discuss the proposed "Construction Industry Collective Bargaining Act of 1975." Accompanying me is William J. Kilberg, Solicitor of Labor.

On July 10, toward the end of my testimony on S. 1479, I said:

> 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.

I would like to begin today by outlining the distinctive structure and process of collective bargaining in the

industry. 1/ A short review of recent developments then provides a setting for the proposed legislation.

Structure of Collective Bargaining

Construction represents approximately 10 percent of the gross national product and the industry employs over 5 percent of the labor force. However, unlike a number of other large industries, collective bargaining in the construction industry is highly fragmented. In the most recent Census of Construction, there were almost one-half million contractors or operative builders with a payroll in the industry -- many of whom are members of associations organized at the local, regional and/or national level. But many are not members of any association.

In the unionized sector of the industry, some 2-1/2 million workers affiliated with 18 national unions are organized into more than 10,000 local unions. Seventeen international unions are affiliated with the Building and Construction Trades Department, AFL-CIO. The locals and subordinate bodies of these internationals are in the main also affiliated with local and State building trades councils. In addition, the International Brotherhood of Teamsters has

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1/ For a more detailed analysis of the bargaining structure, see John T. Dunlop, "The Industrial Relations System in Construction," in Arnold Weber (ed.), The Structure of Collective Bargaining (New York: Free Press of Glencoe, 1961) pp. 255-77; and Daniel Quinn Mills, Industrial Relations and Manpower in Construction (Cambridge: MIT Press, 1972), particularly pp. 3-85.

extensive representation throughout the industry and has been closely involved in collective bargaining with the building trades unions. I use the term "standard national organizations" to refer to these 18 national and international unions. There are a very small number of employees affiliated with independent unions in a few localities.

In some branches of the industry, such as pipelines, sprinkler systems, elevator construction, operating engineers on dredging work, tank work and other boilermaker operations, and electricians on transmission lines, nationwide or regional agreements exist. But generally bargaining is conducted separately in a locality, part of a State, or occasionally on a Statewide basis by each trade with one or more associations of contractors employing that trade. Bargaining is rarely coordinated among trades, local unions of a single trade, or employer associations, although in some localities the basic trades and general contractors tend to negotiate together. In recent years there has been some coordination of bargaining among different contractor associations in some localities.

In New York State, for example, a study in 1969 found that at least 720 local unions representing 21 trades bargained with 160 different employer associations -- resulting in about 400 agreements covering building, heavy and highway construction. California has a different but equally complex structure. For example, the Boilermakers have a regional agreement covering eight western States with one rate for the State of California; the Ironworkers have one agreement covering California and

part of Nevada; the Carpenters, Laborers, Cement Masons, and Teamsters each have three agreements covering northern California, southern California, and San Diego; the Operating Engineers have two agreements covering the area of the State but they also cover Nevada, Hawaii and parts of Utah; the Plumbers have an area agreement for southern California, but a number of localized agreements in northern California; and the Sheet Metal Workers, Electricians and other crafts have many localized agreements.

In general, with the exception of the Electrical Workers, the negotiation and enforcement of collective bargaining agreements and the conduct of strikes (except where strike funds are requested) are carried on by local unions or district councils and local chapters of contractor associations, except where the separate and diverse constitutional powers and practices of the national unions to intervene may be exercised.

One result of this fragmented bargaining structure is that comparisons of wage and fringe packages are commonly made among trades in one area and among the same trades in adjacent areas. During the 1950's and early 1960's wage relationships among various crafts and local areas were comparatively stable. In the last half of the 1960's, however, a large increase in the volume of private commercial and industrial work and public building work, together with high employment in other sectors of the economy, created an increased

demand for skilled labor in the construction industry. In these market conditions, the practice of comparison of wage and fringe packages, together with the succession of expiration dates for collective bargaining agreements, resulted in "leapfrogging" settlements. Each trade sought to negotiate a better settlement than the others, or at least to maintain its traditional differential with the other trades. As a result, starting in the north central, Gulf coast and California areas, high settlements and high levels of compensation spread among crafts and branches of the industry and across broad geographic areas with interconnected labor markets -- such as the West Coast, the Upper Midwest, and the Northeast. Distortions in wage relationships occurred among crafts within an area and across geographic areas.

By 1970, the average percentage increase to take effect in the first year of new agreements, weighted by the number of employees covered, was 17.0 percent. In addition, strike activity increased from an average of 290 strikes per year from 1960-67, or about 20 percent of contract renewals, to over 500 strikes, or a third of all contract renewals, in 1970.

Because of the inherent interdependence of the construction process among different types of contractors, work stoppages in construction are particularly costly, and one stoppage often causes other crafts to halt work or to work much less efficiently as contractors seek to work around the normal

sequences of operations and work in place. These stoppages can also adversely affect material suppliers and other industries related to construction.

Recent Developments

In 1969, as the need to improve the industry's collective bargaining performance became apparent, at the request of Secretary Shultz I began discussions with labor and management in the industry concerning the growing number of work stoppages and other bargaining problems. On September 22, 1969, by Executive Order 11482 the President established the Construction Industry Collective Bargaining Commission to study the complex bargaining structure, to seek solutions to manpower problems and to develop "voluntary tripartite procedures in settling disputes." In the setting of 1970-71 it became apparent to the national leadership of the industry on both sides, and to the government as well, that more effective means were required to cope with situations in motion with the prospect of a new bargaining season in the spring of 1971.

Building on the work of the Commission, on March 29, 1971, the President established the Construction Industry Stabilization Committee by Executive Order 11588, under the authority of the Economic Stabilization Act of 1970. The Committee, composed of four General Presidents of international unions, four leaders in national contractor associations, and four public members, as well as alternate members, had jurisdiction over all collective bargaining agreements in the construction industry.

In addition, the Executive Order provided for the establishment of craft dispute boards by associations of contractors and international unions in the various branches of the industry.

With a view toward achieving long-term stabilization in the industry, the Committee sought to reestablish appropriate historic wage relationships that had become badly distorted in the late 1960's and early 1970's and to improve the structure of collective bargaining. The Committee itself examined each case individually. It gave special attention, where appropriate, to differentiation of rates by craft among branches of the industry, to the coordination of bargaining among crafts and branches within localities, and to agreements providing for significant changes in the geographical structure of bargaining. The Committee also separately considered changes in working rules, refusing to approve most of those which were cost-increasing and encouraged those which decreased costs or resulted in increased productivity.

The participation by national union presidents and national contractor association representatives in the Committee, and the work of national craft boards comprised of labor and management representatives alone, was essential to the success of the Committee in reducing work stoppages, in widening the geographical and craft structure of negotiations in many areas, in rationalizing work rules and conditions, and in constraining the rate of wage and benefit increases. A vital contribution of the Committee was the information and insight provided to each craft and branch of the industry to appreciate

better its position and role in the developments of the whole industry. In 1972 and 1973, first-year increases in new collective bargaining agreements averaged less than 6 percent. In addition, the Committee, the craft boards, and labor and management leaders working in concert were able to settle many labor disputes which might otherwise have resulted in costly strikes. For example, in 1973 there were only 272 strikes over the terms of agreements in the industry, compared to over 500 in 1970.

The Current Scene

On April 30, 1974, despite my urgings to continue a stabilization program in certain sectors of the economy including construction, the Economic Stabilization Act expired without provision for an orderly transition to a period without controls. In an environment of uncertainty, tension and disrespect for national leadership, the construction industry in many parts of the country experienced lengthy and serious work stoppages and excessive wage and benefit increases. Thus, in 1974 there were 437 work stoppages, compared to 272 in 1973. First year increases in wages and benefits in major settlements averaged 10.8 percent compared to 8.8 percent in manufacturing industries, while in particularly sensitive areas and crafts increases of 15 to 20 percent or more created problems of wage distortion to plague other negotiators for many years.

In 1975 settlements, the first-year wage and benefit settlements reported thus far have averaged 9.6 percent.

This figure in itself is deceptive, however, as some parts of the country experiencing high unemployment in the industry have negotiated relatively small increases. For example, the average increases were 6.2 percent in New England and 6.6 percent in New York-New Jersey. In the Miami area, settlements have ranged from 0 to 3.9 percent on building construction. In contrast, settlements reported in the California-Arizona-Nevada-Hawaii region averaged 12.1 percent for the first year, and 15.6 percent in the Washington-Oregon-Idaho-Alaska region. The Council on Wage and Price Stability has just held hearings on an increase of $2, or 16.6 percent, negotiated by the Plumbers in Seattle.

Collective bargaining in construction is different from that in the rest of the economy. For example, more than 95 percent of all expiring collective bargaining agreements in industry generally are settled without work stoppages; the figure in the construction industry is substantially smaller, with less than 90 percent of the agreements settled without a stoppage. Not only do work stoppages occur more frequently in the construction industry, they now last longer. The average work stoppage in the construction industry in 1974 lasted 29 days, compared to less than 23 days for all industries.

When one examines the data for certain cities in the United States for 1975, the magnitude of these averages is dwarfed. Here in Washington, 21 of the 22 construction agreements expire in 1975. Washington was afflicted with work stoppages from April 4, 1975 until August 1, 1975, a period

of 119 days. For example, the Roofers went on strike on April 3, 1975 and were not settled until May 21, 1975. The Cement Masons were on strike from May 1 until June 13. The Operating Engineers were out May 12 to May 20. The Painters struck from May 19 until May 24. The Teamster (Dump Truck) operators and the Laborers were on strike from June 13 until August 1. (The Teamster readymix truck operators' strike started five days later but ended at the same time.) In early September two strikes are in process - the Plumbers and the Pipefitters. Agreements have been reached in 17 cases, but Washington, D.C. still has the possibility of additional stoppages this year. Unlike some areas of the nation, Washington cannot expect to be stoppage-free for the next two or three years, since several of the contracts are for one year.

The Youngstown-Warren, Ohio, area has 20 agreements in the construction industry and 12 of those have expiration dates in 1975. On May 1, 1975 nine trades went on strike. On July 8, 1975 the Carpenters settled after a strike of 77 days. There was general belief that the rest would soon settle; however, it has been about two months and the strike is still on for a total of more than four months during the peak construction period of 1975.

Philadelphia is another city which has experienced numerous construction strikes this year. Twenty-two of 27 construction agreements in the Philadelphia area expire in

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1975. Strikes have been going on there since May 1, 1975, a period of more than four months. There was a brief period at the end of June when there was no strike in Philadelphia, but then the Ironworkers-Rodmen went on strike on the first of July and did not reach a settlement until August 7, 1975. Only the Asbestos Workers remain out, and they have been on strike since July 17, 1975.

Dallas-Forth Worth is one area where the employers locked the unions out on May 8, 1975 and four months later, two crafts, the Sheet Metal Workers and the Glaziers, were still out. Dallas lost about one quarter of the construction year and the best part of the year.

In Beaumont, Texas, the Pipefitters went on strike on April 1, 1975, and did not settle until June 24, 1975, a period of 84 days. This would be bad enough for any area. However, this is only half the story -- other trades struck in April and are still out. Construction work in Beaumont has been virtually at a standstill for more than five months in 1975. It appears that it will undoubtedly go on for some time.

These illustrations are in no way intended to represent particular criticism or blame of some crafts and areas or negotiators as compared to others. Neither does it constitute any unfavorable view of the right to strike or lockout. These cases are handy and are used here solely to provide specific cases of underlying problems in the bargaining

structure and to emphasize the need to improve the process and structure of collective bargaining through collective bargaining itself and a mediation process.

I have seen thousands of work stoppages in this industry and many more illustrations of responsible bargaining and problem-solving. The suggestions for revision in collective bargaining procedures and structure incorporated in the proposed legislation are designed to assist voluntary collective bargaining work more responsibly and effectively. It does not provide any government control over the results of private collective bargaining.

Wages and benefits among crafts in the same locality and among adjacent localities were generally in a stabilized relationship by early 1974, but serious distortions have emerged as some crafts and localities have received much greater increases than other crafts and localities -- preparing the way for a return to the excessive wage inflation of the late 1960's to the detriment of the industry, its workers and enterprises, and to the country as well.

It can be seen from the experience of the last decade that the present bargaining structure of the construction industry fails to provide for consideration of wider interests in local bargaining, resulting in whipsawing negotiations, distortions of appropriate wage relationships, inefficient manpower utilization, and costly strikes. It has been my view for a decade that it is essential to review and modify

the structure of collective bargaining in the industry. In January of this year the national leaders of the unions and the contractor associations stated publicly that they agreed with this view. An enhanced role for national unions and national contractor associations, working as a group, is necessary to provide leadership in solving the critical problems of collective bargaining structure, productivity and manpower utilization.

I do not advocate such legislation for any other industry than construction with its distinctive collective bargaining structure and pattern of negotiations.

Summary of Proposed Legislation

The purpose of the bill is to revise the framework of collective bargaining in the construction industry. It provides an enhanced role in negotiations for national labor organizations and national contractor organizations working as a group, while at the same time preserving the flexibility and variations that appropriately exist among localities, crafts, and branches of the industry.

The proposed legislation seeks to improve dispute settlement, with a minimum of government interference in the collective bargaining process. It seeks to use the process of collective bargaining, rather than government regulation, to improve the structure and procedures of collective bargaining.

The proposed machinery does not constitute wage and price control, nor is it a form of compulsory arbitration. It applies solely to standard labor organizations and to contractors and their associations engaged in collective bargaining. It is not applicable to contractors with independent unions.

The proposed legislation does not apply in any way to contractors who do not operate under collective bargaining agreements.

The major provisions of the proposed legislation are as follows:

(1) The Construction Industry Collective Bargaining Committee is comprised of 10 management representatives, 10 labor representatives, and up to 3 neutral members, all appointed by the President. One of the neutral members shall be appointed Chairman. The Director of the Federal Mediation and Conciliation Service and the Secretary of Labor shall be ex officio members. The role of the parties is enhanced by providing that the members shall be appointed after consultation with the national organizations.

(2) Local labor organizations affiliated with the standard labor organizations in the industry are required to give 60 days notice to their national unions before the expiration or reopening of agreements, and contractors or associations engaged in collective bargaining with them are similarly required to notify either the national organizations

with which they are affiliated, or the Committee directly if there is no national affiliation. The standard national labor organizations and the national contractor associations engaged in collective bargaining are required to forward such notices to the Committee.

(3) The Committee may elect to take jurisdiction of the matter, in which case any strike or lockout is deferred for up to 30 days past the expiration or reopening date.

(4) The Committee may decide to refer a matter to a national craft board or to the national machinery established by a branch of the industry, on which national unions and national contractor associations are represented, in an effort to assist the parties to reach agreement. The Committee may elect to meet with the parties itself.

(5) The Committee may also request the standard national labor organizations and the national contractor associations whose members are directly involved to participate in the negotiations. In that event, any new or revised collective bargaining agreement shall be approved by the standard national construction labor organization with which the local labor organization, or other subordinate body, is affiliated in order for the agreement to be of any force or effect. In the event the standard national labor organization or national contractor association participates in such negotiations, it shall not suffer any criminal or civil

liability arising out of such participation; nor shall the standard national labor organization be subject to any civil or criminal liability arising out of its approval, or failure to approve, a collective bargaining agreement.

(6) The statute specifies the standards which the Committee shall take into account in taking jurisdiction of a matter and requesting the participation of the standard national labor organizations and the national contractor associations. These standards broadly specify improvements in collective bargaining procedures and practices.

(7) The Committee is authorized to make broad studies of collective bargaining in the industry and to make general recommendations with regard to negotiating structures, improvement of productivity, stability of employment, differentials among branches of the industry, dispute settlement procedures, and other related matters.

(8) The proposed legislation runs for a term of 5 years. The Committee shall submit annual reports to the Congress and, 6 months in advance of the 5-year limit, the Committee shall make recommendations with regard to the extension of the legislation.

Conclusion

In conclusion, Mr. Chairman, I wish to urge that the Committee give favorable consideration to the Construction

Industry Collective Bargaining Act of 1975, which is before you. The need to improve the structure of collective bargaining in this industry is widely recognized and accepted by all sides within the industry. There will not be a better time to provide the means peacefully and productively to improve the processes of collective bargaining with full support, participation and involvement of labor and management.

The CHAIRMAN. I think we can conclude this session. It has been a very constructive one.

We will return at 2:15 with the remainder of the testimony that has been scheduled for today.

[Whereupon at 12:30 p.m., the hearing was recessed, to reconvene at 2:15 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. We will come to order for the afternoon session of the hearing on the bill S. 2305.

I appreciate the cooperation of all witnesses. We just plain could not finish this morning. We had an extended session this morning, so we are back now.

Next witness is Mr. Robert Georgine, president, Building and Construction Trades Department, AFL-CIO.

Mr. Georgine, you are ably assisted here. If you will introduce your associates at this time, we will be very, very pleased to hear from you all.

STATEMENT OF ROBERT GEORGINE, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO; ACCOMPANIED BY LOU SHERMAN, GENERAL COUNSEL, AND DAN MUNDY, LEGISLATIVE DIRECTOR

Mr. GEORGINE. Thank you, Mr. Chairman.

I have to my left Lou Sherman, who is general counsel of our Building and Construction Trades Department, and to my right Mr. Mundy, legislative director, Building and Construction Trades Department.

I appear here today in support of S. 2305, a bill entitled "Construction Industry Collective Bargaining Act of 1975."

I am doing so as president of the Building and Construction Trades Department which represents 17 international unions working in the building and construction industry. The Department supports the bill for enactment in this session of the Congress.

The bill takes its place with other legislation and procedures in recognizing the unique and complex facts of the industry. I refer here to the Wage Adjustment Board which functioned most successfully during the early 1940's; the administrative action of the National Labor Relations Board in exempting the construction industry from the scope of the Wagner Act, that is, from 1935 to 1947; the private plan for the settlement of jurisdictional disputes in the construction industry from 1948 to present; the Wage Stabilization Board during the Korean War; the Landrum-Griffin amendments relating to the building and construction industry in such matters as validation of the "pre-hire agreement"; and the Construction Industry Stabilization Committee established by Executive Order on March 29, 1971.

We agree with the analysis by the Secretary of Labor on the distinctive structure and process of collective bargaining in the industry.

We are also in general agreement with the Secretary's analysis of the current developments which call for the introduction of the legislative measure here involved.

It has been necessary, of course, to examine the possibility of detrimental effects resulting from the enactment of this legislation. Let us run through a typical hypothetical case.

Step 1: A local union affiliated with an international union serves written notice on the international union of termination of an existing collective bargaining agreement. This notice is sent 60 days prior to the expiration date of the collective bargaining agreement.

Step 2: The Construction Industry Collective Bargaining Committee applying the standards set forth in section 6 of the bill takes jurisdiction of the dispute. The parties shall continue in full force and effect without resorting to strike or lockout, all the terms and conditions of the existing collective bargaining agreement for a period of 60 days after the notice required by this subsection is given or until the expiration of such collective bargaining agreement, whichever occurs later.

Step 3: The committee elects to take jurisdiction of the matter and requests the standard national labor organization and the national contractors associations whose members are directly involved to participate in the negotiations.

Since the committee has elected to take jurisdiction of the matter, any strike or lockout is deferred for up to 30 days past the expiration or reopening date of the agreement. Also, any new or revised collective bargaining agreement requires approval by the standard national labor organization with which the local labor organization is affiliated in order for the agreement to be of any force or effect.

The steps which have been listed, of course, do not exhaust the possible alternatives provided by the bill. They are intended merely to provide a simple picture of the way such a case may go.

The procedures provided by this bill are neither wage controls nor compulsory arbitration. Indeed, section 5(e) of the bill provides specifically that "nothing in this act shall be deemed to authorize the committee to modify any existing or proposed collective bargaining agreement." The procedures have been carefully drafted so as to provide the necessary time for the mediation processes to take effect.

We also note with interest the provisions of the bill which automatically terminate its effect in a period of 5 years.

The building and construction trades take pride in their longstanding contributions to the development of this country. Some of the international unions affiliated with the Department were founded more than 100 years ago and each has had an important impact on the construction industry and the welfare of the entire country.

The building and construction trades have been on the American scene through good times and bad times. Presently we, the construction industry, are faced with the worst recession of this century. We have unemployment that exceeds 1 million construction workers and our rate of unemployment is more than double the national average.

Each set of problems has to be met on the basis of current and relevant developments. We are practical men. We think that whatever the negative effect of this bill is, it is far outweighed by the establishment of an orderly procedure in meeting the obligations to this industry and to the needs of the country.

The CHAIRMAN. Thank you very much.

Mr. Georgine, do you speak with the force of the entire AFL–CIO on this and has the overall body, the AFL–CIO, dealt with and endorsed this bill?

Mr. GEORGINE. Let me say, Mr. Meany speaks for the AFL–CIO. I speak for the Building and Construction Trades Department of the AFL–CIO, which is the 17 international unions affiliated with it.

If you are asking me if this piece of legislation has the approval of Mr. Meany, let me say that Mr. Meany has seen the legislation, he will support the legislation in its present form.

The CHAIRMAN. You say he will.

Mr. GEORGINE. He does support the legislation in its present form.

The CHAIRMAN. We expect a communication from Mr. Meany.

Mr. GEORGINE. That probably will be forthcoming.

The CHAIRMAN. We do not have it, therefore, I just preview things to come.

Mr. GEORGINE. I am sure that you will get a statement from him.

The CHAIRMAN. In other words, at the national level, this has been fully digested as a matter of fact. I am sure you were part of the construction of this bill, were you not, in its formative stages?

Mr. GEORGINE. We had very detailed discussions with the Secretary of Labor. We had very lengthy meetings with him regarding certain aspects of the bill, and we were at liberty to give whatever suggestions we could. And certainly I am sure that they took many of our suggestions into consideration in drafting the bill.

The CHAIRMAN. This is, then, over a period of how many weeks or months?

Mr. GEORGINE. I think that the Secretary of Labor began drafting parts of this bill immediately after the hearing in the Senate on situs picketing.

So, Senator Williams, it has been that long a period of time.

The CHAIRMAN. Our hearing was in July.

Mr. GEORGINE. July, that is right.

The CHAIRMAN. Now, there has been time and I wonder if it has happened that local union leadership and membership are aware of the legislation and familiar with its impact on their operational methods?

Mr. GEORGINE. Everything has happened quite rapidly. You know, I do not think there was a bill in its final state until the 11th of this month. Very recently anyway.

There has been a great deal of publicity given to the provisions of the bill. We have advised our people of what the provisions are.

We do not have any—we have not had a convention or anything like that that would give some indication of official feeling of the local unions.

There may be some local unions who might have some opposition to certain aspects of the bill and we just do not know at this particular time.

The CHAIRMAN. Have you heard any rumblings of discontent from the locals?

Mr. GEORGINE. We have not received any, no, not to my knowledge.

The CHAIRMAN. Yet it has received a lot of attention, it would seem if there were to be deep feelings they would register in your offices, I would think very rapidly.

Mr. GEORGINE. They normally do; when they do not agree with what we do, they let us know about it.

The CHAIRMAN. I would suspect that is the situation.

What do you think the role of standard labor organizations will be under this new bill, particularly when the committee has requested the participation of the national labor organization under sections 5(b) and 5(c) of the bill?

Mr. GEORGINE. Well, as I understand the bill, once the committee has assumed jurisdiction and directs the international union to get involved, then it would do just that, the international union and the national employers association would get involved in the local negotiations in some way or another to a greater or lesser degree.

I would imagine that we would try to see what the situation is at the time, offer any assistance we can, and help them develop some sort of agreement before the expiration date came about.

Of course, if there was no expiration, no agreement prior to the expiration date, the decision to forego a strike or lockout for up to 30 days before expiration is a provision of the bill, and finally whatever agreement was entered into eventually on the local level would be subject to approval of the international union.

The CHAIRMAN. This period of time gives the committee an opportunity to think this through with the specific labor organization involved and the committee is representative of the industry totally and broadly.

Mr. GEORGINE. That is right.

The CHAIRMAN. Any national labor organization that became involved through the 60-day provisions would be in a position to evaluate its situation with respect to other trades and other national unions and their membership.

Mr. GEORGINE. I would envision, Mr. Chairman, that once a committee directed the national union to get involved or the national employers association to get involved during that 90-day period, if it went the whole limit of 90 days, they certainly would discuss the progress being made by the local union and/or the national parties at their committee meetings to see what type of progress has been made and how it affects flow of negotiations that are going around that would be affected by those particular negotiations.

The CHAIRMAN. Now, on a specifics here, in your statement you say:

> We also note with interest the provisions of the bill which automatically terminate its effect in a period of 5 years.

That is the only statement you have with respect to this 5-year termination, incorporated in this bill before us.

While you note with interest, do you have anything more to say? Do you favor this approach in this bill, the 5-year termination period?

Mr. GEORGINE. Yes, I do favor the approach. I think it is very important that there be a termination date in the bill. My reasons for saying that are simply that, as the Secretary of Labor testified earlier today, the guts of this legislation or the success of this endeavor

depends mainly upon parties and their volunteer efforts to try and make it work.

Now, certainly there are certain restrictions in this bill that are being imposed upon local unions.

You have a 5-year period, 5-year period will take in most of the negotiations that will transpire between now and 5 years from now. That takes in all the long-term agreements that may be 1-, 2-, or 3-year agreements.

You will at least have all of them come before this committee during that time.

Now, certainly if this approach is going to work, if it is going to bring the stability into collective bargaining in construction industry that we feel it is, we will know that within that 5-year period, we will be able to determine whether or not the committee should continue, whether or not there is a need for the legislation any longer. I think it is very important that that termination date be in there.

The CHAIRMAN. Of the 17 unions that are part of your department, how many do have longer term contracts than 1 year?

Mr. GEORGINE. Well, anything longer than 3 years is very rare in this industry. There have been some 5-year agreements. They have proven not to work out satisfactorily, and it is a rare situation when you find any agreement that extends beyond 3 years.

The CHAIRMAN. That 3-year contract, is that common to the trades?

Mr. GEORGINE. Well, prior to 1971, 2- and 3-year contracts were the most common.

With the advent of the Construction Industry Stabilization committee and the controls, many of the local unions then, when their agreements expired negotiated only 1-year agreements because they were uncertain as to what was going to happen, whether controls were going to continue or just how long they would be under controls. So most of the local unions negotiated 1-year agreements.

So we have many more 1-year agreements than any other kind.

The CHAIRMAN. Is that what is happening right now in the contracts that are terminating and the renewals?

Mr. GEORGINE. One and 2 years right now, are the most common agreements.

The CHAIRMAN. No doubt about it, what you say is true, this will be fully tested within 5 years and all the way through the industry?

Mr. GEORGINE. That is exactly right. We feel it will be.

The CHAIRMAN. Senator Stafford.

Senator STAFFORD. Thank you, Mr. Chairman.

I regret another responsibility kept me from hearing Mr. Georgine's statement, but I have read it and I appreciate his being here.

I have just one question.

Can you hear me, Mr. Georgine?

Mr. GEORGINE. Yes, fine, Senator.

Senator STAFFORD. The Contractors Mutual Association has urged that the act under consideration be amended to "explictly direct the Construction Industry Collective Bargaining committee to recommend the plan or plans for multicraft coordinated construction bargaining."

Would you care to comment on that proposal?

Mr. GEORGINE. Well, Senator, this is a very complex industry and collective bargaining in construction industry is as complex as collective bargaining in any industry there is. That particular concept is one that is controversial to say the least.

Now, there are some that feel very strongly that that is the way of bargaining in this industry, and that is the salvation of bargaining in this industry.

There are others who feel as strongly that it is not and that it would be destabilizing.

Now, at this particular time, to put into legislation a provision that would compel a committee to put forth that particular type of program for bargaining, I think would be a mistake.

I think it is something that the industry itself has to work out. There is disagreement on not only both sides of management's fence, but in labor. There are some people in labor who feel that is the way to go. There are others that feel that is not the way to go.

I think it is a thing at this particular point that needs further study, needs further experimentation, and eventually that may be the way; again it may not be but I think it needs further study.

Senator STAFFORD. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Georgine.

Mr. GEORGINE. Thank you very much.

The CHAIRMAN. Now, Mr. Laurence F. Rooney, from the Associated General Contractors of America.

I appreciate Mr. Rooney has a travel situation. We try to accommodate that.

STATEMENT OF LAURENCE F. ROONEY, ASSOCIATED GENERAL CONTRACTORS OF AMERICA; ACCOMPANIED BY JAMES M. SPROUSE, EXECUTIVE VICE PRESIDENT

Mr. ROONEY. Thank you, sir.

Mr. Chairman, members of the committee, my name is Laurence F. Rooney. I am president of the Manhattan Construction Co., Muskogee, Okla. I am a contractor operating with collective-bargaining agreements.

I am accompanied today by Mr. James M. Sprouse, executive vice president of the association.

Mr. Sprouse is, in addition, a member of the Collective Bargaining Committee in Construction.

Today, you heard the Secretary of Labor explain in detail the deplorable conditions currently existing in the collective-bargaining process in construction. We are acutely aware of those conditions because we, like many others, suffer from them.

We agree with the Secretary of Labor that collective bargaining reform legislation is absolutely necessary for the continuation and, I fear, the survival of the construction industry as we know it.

In our opinion, any such legislation, to be helpful and successful, must contain the following provisions:

First, any bill developed for these purposes should contain no automatic expiration date. If such legislation is needed at all, its need

should not be terminable any more than the Taft-Hartley or the Landrum-Griffin Acts are terminable. Amendable or repealable, yes; terminable, no.

Second, such legislation should be for the single purpose of improving the collective bargaining relationships between construction unions and construction contractors who employ workers represented by those unions. Lawyers and the courts will certainly interpret the legal intent of this legislation for years, and to preclude any future possibility that the influence of the Construction Industry Collective-Bargaining Committee may be lost along the way, or that the courts may have to decide the congressional intent of the legislation, we suggest that a subsection be added to section 2. The new subsection would read as follows:

Nothing contained in this act shall apply to construction contractors when operating without collective bargaining agreements.

One of our concerns in this area is that those contractors who have elected to operate two companies, one without collective-bargaining agreements as well as one with collective-bargaining agreements, could suffer by an international requiring, prior to approving an agreement, that a clause be written into his collective-bargaining agreement that he could not operate his other company on a nonunion basis.

Third, collective-bargaining agreements, the negotiation of which would be subject to such legislation, should have a common expiration date determined by the Construction Industry Collective-Bargaining Committee. With all agreements expiring on the same date, there would then be no economic increases which union negotiators could establish as a floor for their economic demands without regard to the state of the economy.

Fourth, all wages, fringe benefits, and other monetary provisions of collective-bargaining agreements should become effective on or after the date the agreement is reached, and there should be no retroactive payments. If retroactivity were prohibited by law, it would serve as a deterrent to those unions which refuse to bargain seriously until a pattern of settlements is developed in other negotiations in the area. This sort of delaying tactic often results in strikes, because such unions attempt to secure higher settlements than contractors have reached with other unions thereby endeavoring to disturb historic relationships among the unions.

Fifth, when a collective-bargaining settlement requires ratification by the membership of the labor organization, voting should be limited to those members actively employed by the employers involved. Some local unions represent workers employed under several different collective-bargaining agreements. To permit union members who will not be working under the provisions of the agreement presented for modification to vote, results in the rejection of too many agreements worked out in good faith by negotiating committees. Those who vote on a proposed agreement which will not affect them are likely to vote to reject, since they have nothing to lose. In fact, they may gain by pushing up the ultimate settlement since by so doing it is likely they will receive a higher increase than they otherwise would in the next negotiation of the agreement under which they will work.

Sixth, multiemployer bargaining units should have the same status under law as unions enjoy which is that the multiemployer bargain-

ing units be recognized as exclusive bargaining agents for all employers who will employ, on like work, men represented by the union. Presently an employer not a member of the multiemployer bargaining group may enter into an interim short form agreement which typically provides that the employer will pay, on a retroactive basis, any economic increase negotiated by the recognized multiemployer bargaining group. Under such agreement the employer continues to employ workmen represented by the union while the union is on strike against members of the multiemployer bargaining group.

Other contractors working under national and project agreements may elect to follow the same course of action. Interim agreements, national agreements, and project agreements prejudice the ability of the multiemployer bargaining group to reach a reasonable settlement with the union. Such agreements should be barred.

Seventh, the Construction Industry Collective-Bargaining Committee should automatically take jurisdiction over every negotiation for which they have received notice. The interrelation among negotiations in our industry requires that the provisions of the act come into play in each negotiation so that unstabilizing situations may be handled as they develop.

Eighth, the Construction Industry Collective Bargaining Committee, in place of the international union involved, should approve or reject all collective bargaining agreements subject to its jurisdiction. The rejection of any agreements should be only because a provision or provisions would increase costs to a degree which would prove unstabilizing. This provision would provide an opportunity for experienced leaders representing labor, management, and the public to review agreements reached. A broad-based review would, we believe, prove most beneficial to the industry and to our customers.

Ninth, the act should set forth in clear language the responsibilities of the labor and management national organizations when they are called upon by the committee to provide effective mediation and conciliation services. As Secretary of Labor Dunlop pointed out in his testimony, there have been several plans put forth over the years which depended upon voluntary action on the part of international labor organizations and national employer associations to provide services to assist in making collective bargaining more effective. These plans failed, and any plan which does not require, by its terms, responsible action also will fail.

During the development of the legislation which you are considering, representatives of the AGC held several informal discussions with the Secretary of Labor on the subject. These were general discussions dealing with the philosophy and principles of the proposal, and nothing at that time was in writing, but until these were developed into actual legislative language, there was no way in which our governing body could give them proper consideration. In meetings of the Collective Bargaining Committee in Construction, where this subject was discussed on several occasions, AGC representatives stated that while they supported the need for corrective legislation, no commitment could be made on behalf of the association until we saw the language of the bill.

On August 28, we advised the Secretary that unless we received the actual language of the bill with a reasonable length of time in which

to give it the consideration it certainly would deserve, we could not actively support the legislation. On September 3, we were furnished a summary of the bill. We immediately held a meeting of our national officers, together with our labor counsel, and following that meeting, AGC President John N. Matich said:

> Based on the summary, the legislation appears to be a step forward, but until we have the opportunity to examine the actual bill in detail, we are not in a position to commit ourselves to support it.

We received copies of the bill on the afternoon of Friday, September 5. We mailed copies to our executive committee that day and scheduled a meeting of the committee for the following Wednesday to attempt to establish a position on the bill. We found, however, that 3 working days was not sufficient time for us to consult with our members and counsel, analyze the bill in detail, hold a meeting of our executive committee, establish a position, and prepare testimony on an issue of this importance to our industry. It was apparent to our executive committee, however, even after only a cursory examination, that the bill does not go far enough to enable us to consider it to be truly significant collective bargaining reform legislation. We are still of that opinion.

As a responsible association, we always are ready, willing, and, indeed, eager to meet with the Secretary of Labor, the leaders of organized labor, and any other persons of responsibility to cooperatively develop truly meaningful legislation to improve the collective bargaining process in construction. The short length of time which we have had this legislation has not permitted this. This is an issue which certainly deserves due deliberation, thorough study, and thoughtful consideration by all affected parties. The bill you are considering has not had those benefits, which leads us to question the necessity for the extremely rapid movement of the bill. What is there about this bill that is so urgent? This committee has long had the reputation for giving to each proposal which comes before it the due deliberation, thorough study, and thoughtful consideration which I mentioned earlier. I urge you to do so now and to consider the suggestions we have made as committee amendments to the bill.

Mr. Chairman, for the reasons we have outlined here, principally the short period of time we have had to give consideration to this proposal and our very deep concern over the rapidity of the legislative process in this case, we cannot support the legislation in its present form.

And further to my printed statement, Mr. Chairman, we are increasingly disturbed by the statements, including those made by the chairman of the House Education and Labor Committee and members of this committee describing this bill and the situs picketing bill as a package. If that in fact occurs, we will have no choice but to actively oppose S. 2305. There is no legislation we can support if it includes in any way the legislation of secondary boycotts in construction industry.

Thank you, Mr. Chairman and gentlemen.

The Chairman. Thank you very much.

The suggestion of packaging these two bills did not come from the Labor Committee here or the Labor and Education Committee over there, as you know. It is the President's idea for dealing with two

bills involved with the same industry. They should be from his standpoint packaged together.

There is an equal branch of Government, and we have to try to live with the other branch, as you know. It is not always easy, but we try to make our relationship as accommodating as possible.

So that is why there is this discussion. Whether that is going to come to pass or not we do not know. But if you will recall, the President during an interview in Milwaukee in August, I think—did he mention it at that time?

Mr. SPROUSE. May I call your attention to the statement by the chairman of the subcommittee in the Congressional Record of September 8, 1975? When he introduced this bill, he said, "This bill is the companion to H.R. 5900; it is the second half of the much discussed 'package' mentioned during the debate on H.R. 5900."

The CHAIRMAN. What was the date of that?

Mr. SPROUSE. September 8, 1975, Congressional Record.

The CHAIRMAN. Was that Chairman Perkins?

Mr. SPROUSE. No, Chairman Thompson.

The CHAIRMAN. Of the subcommittee. Again, he was reflecting the President's views expressed to us in the meeting at the White House prior to that, and also the President's statement in a rather comprehensive question-and-answer period fully recorded when he stopped by in Milwaukee. So that is how that has developed.

And again, it is not one bill, there are two bills. We do not know just exactly what the future will bring.

Senator Randolph, are you going to comment at that point?

Senator RANDOLPH. I was going to say, in other words, you did not present, on this matter at least, a solid New Jersey front? [Laughter.]

The CHAIRMAN. Well, I did not make that statement—we are still, you are right, we are a deliberative group as they are, and there is a lot of deliberation yet to come in this matter, so we will probably end up with pretty solid New Jersey front. [Laughter.]

Mr. ROONEY. I appreciate that.

The CHAIRMAN. Mr. Thompson is from New Jersey.

Mr. ROONEY. Oh, yes.

Senator RANDOLPH. Sorry.

Mr. SPROUSE. The position we have is one of very deep concern over this bill, which we have already said publicly is no panacea, is not going to work any miracles, but it is a step in the right direction, but which you are now associating with what we consider to be a thoroughly bad piece of legislation.

The CHAIRMAN. I appreciate your view, and we reiterate what we have known.

There are a couple of points I would like to raise.

On page 4, on the question of those who were entitled to be part of the ratification, the last two sentences seem to me that something is lacking for me to understand the full import of what you are saying.

Those who vote on a proposed agreement which will not affect them are likely to vote to reject since they have nothing to lose. In fact, they may gain by pushing up the ultimate settlement since by so doing, it is likely they will receive a higher increase than they otherwise would in the next negotiations agreement under which they will work.

In other words, they are not working now, but they might be working later; is that the point?

Mr. Rooney. They are not working on this particular bunch of negotiations.

The Chairman. I see.

Mr. Rooney. They might be off some place else, West Virginia.

The Chairman. And they are in the trade?

Mr. Rooney. Yes.

The Chairman. While they are not on the job.

Mr. Sprouse. They might be working for the local municipality.

The Chairman. I see. But this is their trade, they might be part of it later, might be working later, and be the beneficiary?

Mr. Rooney. Yes.

The Chairman. I see. Again, the selection of those who are qualified to vote on a ratification is not as clear as the situation in other industries.

Mr. Rooney. I understand.

The Chairman. This was dealt with this morning.

Certifications are I think an exceptional thing in construction where certifications are the regular order in other industry.

Mr. Rooney. Yes.

The Chairman. As I understand it.

Let me ask you whether the nine points made and suggested in the form of suggested amendments, changes in the bill, whether these nine points were raised in the informal discussions, as this bill was in the process of formulation?

Mr. Rooney. Well, I think since Mr. Sprouse was on that committee, would it be permissible for him to answer the question?

The Chairman. Fine.

Mr. Sprouse. Five of them were, Senator. I could enumerate them if you like.

The other four were raised in the meeting of our executive committee, which was mentioned in Mr. Rooney's testimony, on September 10. They were then added to the five already discussed with the Secretary in the informal discussions I mentioned.

The Chairman. So they have been considered. This is not new material coming to the discussions of this subject matter today?

Mr. Sprouse. I would say that four of them might have been new to the Secretary when we testified in the House. The other five we had discussed with him.

The Chairman. You mentioned what are the others?

Mr. Sprouse. Five we had already mentioned to the Secretary before the occasion of September 10, which was our executive committee meeting date.

The Chairman. What are the numbers here?

Mr. Sprouse. Nos. 1, 2, 3, 4, and 5.

Nos. 6, 7, 8, and 9 had not been discussed with the Secretary in discussions and I would expect that he did not know of those before we testified——

The Chairman. Is it fair for me to feel that the difference here, one of the differences between your position and the Secretary's is that he does not want to come forward at this time with legislation that man-

dates certain activities with certain penalties following if the mandated activity is not followed?

What he is talking here about is the framework within which the parties hopefully can work in really a spirit of reflection and accommodation of what the Nation needs, rather than specifically saying under this law you must do this, that, and the other thing.

You are mandating. You would mandate certain things.

Mr. ROONEY. Yes.

The CHAIRMAN. For example, then is the uniform expiration date for contracts of the trades, is that mandated in your view and should that be made a matter of law?

Mr. ROONEY. I think so. In the interest of efficiency.

The CHAIRMAN. Then I would gather the Secretary's view is that that is an objective and that it would be good indeed if the parties would come to that conclusion themselves; is that not sort of basic to his attitude here?

Mr. SPROUSE. I certainly would not presume to speak for the Secretary of Labor. He was on the stand for 2½ hours this morning and he can speak for himself, but I believe his attitude toward this is perhaps more one of persuasion than our testimony here today might reflect.

The CHAIRMAN. I would think that many of the ideas you have presented, they seem to me to have considerable merit.

Are things that, again, the Secretary of Labor, would hope the committee could, to use your word, now be persuasive in getting parties to come to that conclusion, rather than make it mandatory under law or dictate under legislation, let the parties arrive at these conclusions on their own?

Mr. SPROUSE. I could give you a qualified answer to a hypothetical question, but that is what it would be.

I would presume that is in the Secretary's mind, but again I do not speak for the Secretary.

The CHAIRMAN. Well, again, we do not have time to thoroughly consider your suggestions. We want to thank you for your attendance here, and your well-thought-out positions and suggestions.

Now, I turn to Senator Stafford.

Senator STAFFORD. Mr. Chairman, I have just one question here. I appreciate your testimony, both of you gentlemen. I note that in your comments beyond your statement that you indicated opposition to the common situs picketing bill and I noted several times that in connection with this bill, you used the phrase you cannot support it.

Does that mean you are actively opposed to it or that you are simply not supporting it?

Mr. ROONEY. Well, we would be actively opposing it if it was coupled with this common situs, as some sort of quid pro quo thing.

It would be unacceptable to the members of our industry no matter what passes with it, behind it, in front of it, any way, sir.

The CHAIRMAN. Separating it entirely from the other bill and I think testimony of the Secretary this morning in response to some questions I asked, was that it is just totally separate, a totally separate piece of legislation, as a separate piece of legislation, are you opposed to it in its present form?

Mr. ROONEY. In its present form without some of these things clarifying points we say are made so ambiguous, we really could not support it, because it really does not do all of that.

Like you said, it is a good step, but it is a moderate one, toward the chaos in this industry.

Senator Stafford. If some of the suggestions you have made for changes were adopted, do you believe you would then support it?

Mr. ROONEY. If we get this other matter—we have a real, real problem in scheduling. I do not know what you gentlemen call it. Progress of these two documents, these two bills, through the legislative process; no matter what it is, it will never be—what is that word they use—meaningful reforms to get that secondary boycott. There is no such thing as that.

Mr. SPROUSE. I think I might perhaps answer what I think you are asking. If the situs picketing bill had been passed out, voted up or down and signed or vetoed by the President a month ago, our views on this bill would be quite different.

Senator STAFFORD. Your views on this bill are related to the other one even though they are two separate packages?

Mr. SPROUSE. That is right, because we can conceive where we would be put in a position in the Senate of working hard to get one piece of legislation passed—and find its "companion" legislation is in the "package" that is being discussed.

Senator STAFFORD. I guess I understand.

Mr. ROONEY. You have kind of a "stop beating your wife" situation.

Senator STAFFORD. We certainly do not want to do that. [Laughter.]

Thank you.

The CHAIRMAN. Senator Randolph.

Senator RANDOLPH. You did not mean to say we should not stop beating our wives? [Laughter.]

Senator STAFFORD. We did not want him to be in that situation.

Senator RANDOLPH. As far as our household is concerned, I can tell you, we had better never begin. [Laughter.]

But, Mr. Chairman, and Senator Stafford, before I believe you came in this morning—and I am not sure, you may have been here at the time, but I made reference to an editorial in the Washington Star of yesterday. The heading of that editorial was "Ending Construction Chaos."

I do not know whether you have read the editorial.

Mr. SPROUSE. Right.

The CHAIRMAN. I did, too.

Senator RANDOLPH. But either you, Mr. Georgine, or you, Mr. Sprouse, or both of you, is there chaos in the construction industry from the standpoint not of the high unemployment of construction workers, which of course is very much higher than workers in other fields, that is another point for just the moment, but is there chaos or is there a situation that has been deteriorating over the months or years in the relationship between the constructors and contractors and the workers?

Mr. SPROUSE. I do not know if I would describe it as chaos, but I do believe, along with the Secretary of Labor, and we stated in our statement that reform in the collective bargaining process is needed. It is desirable and we support it.

I do not know that I have answered the "chaos" question.

Senator RANDOLPH. I believe I called you by the wrong name.

Mr. ROONEY. "Rooney"?

Senator RANDOLPH. I wrongly called you Mr. Georgine. I am very sorry.

Mr. ROONEY. Mr. Georgine is with the Building and Construction Trades Department, of the AFL-CIO.

That is all right, he is a nice guy.

The CHAIRMAN. You are in the same business.

Mr. ROONEY. Just opposite side of the street, that is all.

Senator RANDOLPH. I am one Member of the Senate who has no hesitancy in saying so when I am mistaken.

Sometime, sometime we will come to the realization we cannot do floor work and committee work on the same days and move in a shuttle operation from one committee to another.

I am only using this as an opportunity—I know we are not in session now and people are wondering how——

Mr. ROONEY. I do not know how you do it then.

The CHAIRMAN. Then again there are five committees this morning. I was on five committees meeting at the same time.

Senator RANDOLPH. Right.

The CHAIRMAN. There will never be any perfectly efficient way.

Senator RANDOLPH. No, but it is complicated when you are trying to be on the floor and in the committee, one or many committees.

The CHAIRMAN. Yes.

Senator RANDOLPH. I think sometime we will have to have committee days and floor days.

I was not trying to explain my error except to say you do carry on a rather less than efficient operation as you move from one committee to another, and perhaps have a slippage of words.

Mr. ROONEY. Yes, sir.

Senator RANDOLPH. I now direct a question to you.

Is there chaos in the construction industry in the relationship of constructors and contractors to workers and vice versa?

Mr. ROONEY. I could not use that word.

Senator RANDOLPH. All right. All right. You read the editorial?

Mr. ROONEY. Yes. Well, the editorials sometimes say things like that.

Senator RANDOLPH. I see.

And, Mr. Sprouse, I am not sure, did you make a definitive response to that question which I——

Mr. SPROUSE. No; I did not.

Senator RANDOLPH. Would you answer?

Mr. SPROUSE. My answer would be the same, Senator. I do not know that I would use the term "chaos" in describing the conditions that exist today, because I think that term is too broad and subject to too many interpretations. I do believe, sir, there is a need for reform in collective bargaining process, and we so stated in our testimony.

Senator RANDOLPH. Our chairman, Senator Williams, was speaking to your points 1 through 5, and 6 through 9, and so forth.

You made the first five recommendations, did you, to the Department of Labor?

Mr. SPROUSE. We made recommendations to the Secretary by letter, as did the Council of Construction Employers, the president, which will follow us here, on the first five points.

Senator RANDOLPH. That is correct.

What, Mr. Sprouse, were the responses of the Department to the recommendations?

Mr. SPROUSE. We made the suggestions in writing and received no response to that. Verbally they were rejected.

Senator RANDOLPH. And you presented point by point your recommendations?

Mr. SPROUSE. Yes; the five which we mentioned.

Mr. ROONEY. Yes.

Senator RANDOLPH. Five, yes. And received no response from the Secretary of the Department of Labor?

Mr. SPROUSE. Received no response in writing, Senator.

In discussions with the Secretary, he said they would not be included in the legislation. They would not be included in the legislation as he presented it—as he proposed it, I think that would probably be a better word.

Senator RANDOLPH. Well, I have to follow this a moment. Did he tell you verbally the reasoning behind why they were not being considered?

Mr. SPROUSE. He said the suggestions were not practical, could not be accepted by Labor, did not belong in this legislation. Those are the reasons given, as I recall.

Senator RANDOLPH. I am not critical of procedures within the Department or by the Secretary, but I want the record to reflect that I think when recommendations are placed in writing, that the response should also be in writing. That leaves no question as to where the Department or the Secretary would stand. And I just wonder why that situation should not prevail.

Of course, earlier today, in discussing the plan, the overall purpose of S. 2305, the Secretary did, I believe, say more than once that this was a procedural tool, or he said it in different language. That was the thrust of what he was saying.

Now, I am wondering whether you believe that it is a procedural tool? Does it stop there, or does it go beyond that point or——

Mr. ROONEY. Well, we just think to make it worth while, to make it work to the benefit of the country, it needs more than just a push down the road; all the good faith and cooperativeness, it needs a little bit of constraint, definite guidelines. That is why we suggested these things.

Senator RANDOLPH. I am going to ask another question in connection with the Collective Bargaining Committee. What would be the effect, if you would care to comment, of the committee taking automatic jurisdiction over all collective bargaining negotiations?

Mr. ROONEY. Well, we think it will improve the efficiency of it, the effectiveness of it. It would get prompt action before something got way out of hand, being a timelag. Sooner they get about it, the better off we would be, we feel.

Now, there is liable to be a logistic problem with all of that. I imagine that is running through your mind.

Senator RANDOLPH. Yes.

Mr. ROONEY. Lots of people, lots of warm bodies, lots of chairs, lots of paper.

Senator RANDOLPH. Yes.

Mr. ROONEY. But it is liable to be that way anyway. We just think it would be more efficient.

Senator RANDOLPH. I understand, Mr. Rooney, in effect, you are saying that in the situations which are attempting to be cured by one method or another, including legislation, it is not always the legislation that you would have approved, but that the purpose of the legislation, its general framework, are sound, and then if you can have an input and perhaps strengthen the legislation, you could be for it.

Without using the word "chaos," perhaps not even using the word "strike," what is the problem if there is a problem that exists within the construction industry in reference to bargaining with workers?

Mr. ROONEY. Well, I guess that has been the subject of more speeches and books and writings by people far more intelligent and versed on the subject than me. But I guess it is a responsibility, not always on—a responsibility, not always on the labor side only; we have had our share in it, too.

Senator RANDOLPH. Yes, sir.

Mr. ROONEY. Disregard to the good of the country. And we are a fragmented industry, can't help that, that is the way we evolved. We are mobile; we move, as do the men, as does the labor, they go where the work is. And it is just hard to get a handle on something when it is not staying still.

It is kind of like OSHA, it is disaster for we mobile people in construction; not a bad idea for foundaries, machines nailed down, people doing the same thing over and over.

Senator RANDOLPH. You say OSHA is good in some places?

Mr. ROONEY. It is really a manufacturer's bill. It is not adaptable to our industry.

Senator RANDOLPH. Because of mobility.

Mr. ROONEY. Mobility, special changing conditions, nonuniqueness of our work. Each project, you know, is a little different than the other one.

Ravine may be deeper or river wider or different type of structure. This has the same kind of aspects as far as labor negotiations are difficult in a group, and it moves around as much as we do, and are as fragmented.

Senator RANDOLPH. Are you talking about the physical problems that arise?

Mr. ROONEY. Yes; number of cracks.

Mr. SPROUSE. I think the Secretary describes it very well on pages 3 and 4 of his testimony this morning.

I do not know that I would describe it as "chaos," but it is certainly a mixed bag of operations.

Senator RANDOLPH. Mr. Chairman, one final question, which perhaps I could address to you.

I would suggest if you feel, as do I—you know, I said that I was concerned that the Department of Labor through the Secretary did not respond to specific suggestions of those who are testifying. Is it improper or inadvisable for our subcommittee to ask the Secretary or

the Department to respond—I am not talking about a certain union or certain segment of industry, but we are asking people to come here and to talk with us, and they are doing that, and whether we are in agreement or partial agreement or what not, we do not have really in writing the response of the Department or Secretary to the suggestions they are making. So I think it gets into an area where we are not really interfering, but we are attempting, I hope, to facilitate.

The CHAIRMAN. Well, earlier today it was understood with the Secretary of Labor that following this hearing, there will be further discussions with him and his Solicitor both, in a personal way. And also there would be information that we will want to receive from him in writing. They ask questions to put to him. That would be very proper, questions formulated out of his testimony.

Mr. SPROUSE. In that event, Senator, would it be in order to suggest our letter of August 28 on this subject, together with Mr. Taylor's letter of August 26, also on the same subject and covering the ones we mentioned, be made a part of this record? But I am not criticizing or even commenting on the Secretary not responding in writing to my letter; we discussed its contents thoroughly, and I understood the Secretary's response.

The CHAIRMAN. I do not see any reason why not.

Mr. SPROUSE. Thank you.

[The letters referred to follow:]

COUNCIL OF CONSTRUCTION EMPLOYERS, INC.

SUITE 711, 1625 I STREET, N.W., WASHINGTON, D.C. 20006 • (202) 872-0017

August 26, 1975

Honorable John T. Dunlop
Secretary of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Mr. Secretary:

The Council of Construction Employers applauds your development of proposed legislation to improve the collective bargaining process in the construction industry and pledges its continued support to your efforts.

We have several suggestions to make which we sincerely hope will be in your proposal:

1. We believe the statute, if enacted, should be a continuing one and should not contain an expiration date. Of course, periodic reports should be made to the President on the effectiveness of the act;

2. We suggest that the act contain the requirement that all collective bargaining agreements have a common expiration date;

3. We suggest that wage, fringe benefit and other monetary provisions of any collective bargaining agreement become effective on or after the date agreement is reached and that there be no retroactivity;

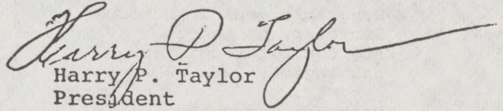
4. We suggest that where a collective bargaining settlement requires ratification by the membership of the labor organization that voting be limited to those members actively employed by the employers involved.

Suggested language to carry out these suggestions is attached, and we request your very serious consideration.

We want very much to actively support this legislation. We are fully aware that once introduced it passes from your control, but we must reiterate that it is the very firm position of the Council of Construction Employers that we cannot support this or any other legislation or proposal that contains provisions to legalize secondary boycotts in the construction industry.

With a full understanding of your responsibilities, we are

Sincerely,



Harry P. Taylor
President

HPT:kg

Attachment

REPORT TO THE PRESIDENT

The ______________________________ Committee shall prepare and present an annual report to the President on the effectiveness of this Act in stabilizing relationships between the representatives of construction unions and employers in construction.

A COMMON EXPIRATION DATE

Every collective bargaining agreement in the construction industry entered into after ____date____ shall expire on ____________, 197_. Collective bargaining agreements in effect upon the effective date of this act shall be considered to expire not later than ____________, 197_. Not less than 180 days prior to ____________, 197_, the ____________ Committee shall establish an expiration date for all collective bargaining agreements in the construction industry which will be entered into and effective on or after ____date____. The Committee will from time to time establish new common expiration dates as necessary.

VOTING TO RATIFY A COLLECTIVE BARGAINING AGREEMENT

Where a collective bargaining settlement requires ratification by the membership of the labor organization, voting shall be limited to those members who are actively employed by an employer who will be bound by the wages and working conditions set forth in the proposed collective bargaining agreement.

RETROACTIVITY

Wage, fringe benefit and other monetary provisions of any collective bargaining agreement subject to this Act shall become effective on and after the effective date of the agreement. The effective date of any agreement shall be no earlier than the first business day following final approval by all concerned parties, and written notice thereof to the other party or parties, whichever occurs later.

August 28, 1975

Honorable John T. Dunlop
Secretary of Labor
Department of Labor
200 Constitution Avenue
Washington, D. C. 20210

Dear Mr. Secretary:

On August 26 Harry P. Taylor, President of the Council of Construction Employers, addressed a letter to you containing four suggestions which the Council of Construction Employers sincerely believes should be in the proposal you are developing for collective bargaining reform legislation and attached to that letter suggested language to carry them out.

These sggestions, which were originally drafted by AGC, have our complete support, and we urge you, in the strongest terms, to include them in the proposed legislation.

We very much regret the fact that although we have been discussing this proposal with you informally for several weeks we have never seen even a draft in writing, and therefore have nothing which we can place before the members of our association to obtain official support for the legislation when it is introduced. This uncertainty as to the exact nature and exact language of the bill forces us to advise you that unless we receive the language with a reasonable length of time in which to give it the consideration it certainly will deserve, we cannot actively support the legislation.

Sincerely,

J. M. Sprouse
Executive Vice President

JMS:jw

The CHAIRMAN. These are letters addressed to——

Mr. SPROUSE. Yes; my letter starts out by saying:

> On August 26, Harry P. Taylor, president of the Council of Construction Employers, addressed a letter to you containing four suggestions which the Council of Construction Employers sincerely believes should be in the proposal you are developing for collective bargaining reform legislation and attached to that letter suggested language to carry them out.
>
> These suggestions, which were originally drafted by AGC, have our complete support, and we urge you, in the strongest terms, to include them in the proposed legislation.

To make again perfectly clear what I am saying, in response to your question, Senator Randolph, the Secretary did not respond to these in writing, but he did verbally.

The CHAIRMAN. We will amplify, in a sense perfect, the record in all of this.

Senator RANDOLPH. I think that is wholesome, Mr. Chairman, to always conduct these hearings, and to attempt to work with parties with their own viewpoints; to attempt to be complete in the compilation of the record on which the subcommittee makes decisions. So I appreciate your willingness to do that.

I thank the witnesses for exploring this subject matter with me.

The CHAIRMAN. Thank you, Senator.

Gentlemen, thank you.

Mr. ROONEY. Thank you very much.

The CHAIRMAN. Mr. Harry P. Taylor, president of the Council of Construction Employers, is our next witness, our final witness as a matter of fact, this afternoon.

STATEMENT OF HARRY P. TAYLOR, PRESIDENT, COUNCIL OF CONSTRUCTION EMPLOYERS

Mr. TAYLOR. Thank you, Mr. Chairman.

The CHAIRMAN. We appreciate your being with us today and your patience in meeting our schedule.

Mr. TAYLOR. Quite all right.

I am in town, so it is not as inconvenient as it might be.

I have a short statement. I would like to read it.

The CHAIRMAN. Fine.

Mr. TAYLOR. My name is Harry P. Taylor. 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. They are:

Associated General Contractors of America, Inc.
Ceilings and Interior Systems Contractors Association.
Gypsum Drywall Contractors International.
Mason Contractors Association of America.
Mechanical Contractors Association of America.
National Association of Home Builders.
National Association of Plumbing-Heating-Cooling Contractors.
National Electrical Contractors Association.
National Insulation Contractors Association.
National Roofing Contractors Association.
Painting and Decorating Contractors of America.

And Sheet Metal and Air Conditioning Contractors National Association.

Associated General Contractors of America prefers to present its own position, which it has just done because of the change of schedule, and Sheet Metal and Air Conditioning Contractors National Association is opposed to the bill, which differs from the position I am about to give.

Council member associations have a combined membership of 77,000 contractor employers in the construction industry employing approximately 3.5 million construction workers.

All of our member associations have chapters or contractor members who not only employ members of organized labor in the construction industry, but negotiate collective bargaining agreements with them as well. Therefore, they are vitally 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.

Our council favors passage of S. 2305. When I appeared before your subcommittee approximately, Mr. Chairman, 2 months ago in opposition to proposed common-situs picketing legislation, I stated that the entire framework of collective bargaining in the construction industry is in need of review. Although S. 2305 falls somewhat short of that which we would like and believe is needed, we do believe that it would provide a mechanism through which the construction industry, both labor and management, can begin to examine and deal with its problems with a minimum of Government interference.

However, we remain unalterably opposed to common-situs picketing legislation for reasons stated earlier, and the proposed legislation being discussed here today, if passed, would in no way diminish our opposition to common-situs picketing. We view them as two completely separate and distinct matters.

To understand the need for the proposed legislation, one need only examine the history of collective bargaining in the construction industry over the past half-dozen years. As the committee well knows, there are in existence literally thousands of agreements between local building trades unions and local contractor associations. Each settlement, in varying degrees, of course, directly or indirectly, affects others.

In 1969 and 1970, negotiated wage and fringe benefit increases zoomed to a national average of 15 to 18 percent. Some say the figure reached 22 percent in the quarter immediately preceding controls. Costly, nonproductive working conditions were negotiated in ever-increasing numbers. Productivity decreased. One out of every three negotiations resulted in a strike. Traditional relationships between the trades were grossly distorted and "leap-frog" bargaining was running rampant. The entire economy of the country was being led into inflation by its largest industry—construction.

As a result, Government controls were imposed in 1971 on collective bargaining in the construction industry through creation of the craft boards and the Construction Industry Stabilization Committee. Those controls were in effect for 3 years—a record length of time.

During controls, the average increase diminished to about 11 percent in 1971, 5.6 percent in 1972, and 5.3 percent in 1973. Strikes were reduced to about one-third of the 1970 level. New, costly working conditions were disallowed. Some previously existing ones were removed. In some cases, constructive restructuring of bargaining areas was accomplished. In general, traditional relationships among the trades were restored.

But the public and the Congress had become so disenchanted with controls in general that they were allowed to expire on April 30, 1974—including wage controls in construction.

Now, because May 1 is the most popular anniversary date for labor agreements in the construction industry, and because June 1 is the second most popular anniversary date, within just 31 short days after the removal of controls on April 30, 1974, the bulk of the 1974 labor agreement increases went into effect.

Some of the new agreements not only provided for substantial increases, but also contained so-called catch-ups restoring much if not all of previously negotiated rates disallowed by the CISC. Some such settlements amounted to increases of upwards of 20 percent and set the stage for "leap-frog" bargaining to begin all over again, both between other trades in the area and the same trade in other areas. Strikes tripled. Costly working conditions again began to find their way into settlements.

If I could pause, Mr. Chairman, I would like to say I hope Senator Randolph reads those last few paragraphs, because of the questions he asked of the previous witnesses. He asked if there is chaos.

I make speeches referring to "chaos revisited," referring back to the situation in 1969 and 1970. If it is not chaos, it is approaching it very, very rapidly.

The same situation persisted through the 1975 bargaining season, notwithstanding the horrendous unemployment rate in the construction industry, and the ever-increasing inability for those contractors who employ the union building trades to obtain work. Although the majority in both labor and management are aware that economic suicide is being committed, little can be done about it without remedial legislation.

It is recognized that the proposed legislation would in no way impose wage controls or compulsory arbitration on the negotiating parties. Nevertheless, it would permit national labor and management leaders, together with representatives of the public, to attempt to persuade, in a limited number of cases, local negotiators from entering into inflationary, precedent-setting agreements. Equally important, the proposed legislation would provide much-needed mechanism for the encouragement of disputes-settling machinery, restructuring of bargaining areas where appropriate, stability of employment, and the training of skilled manpower when and where needed.

It is our assumption and understanding that the 60 days mentioned in section 4(a) of the bill is the 60-day period immediately preceding the expiration date of the agreement and that the 90-day period mentioned in sections 5 and 6 of the bill is intended to be the last 60 days of the agreement and the next subsequent 30 days. We believe that the language in the bill needs clarification on these points.

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I said the same thing last week, Mr. Chairman, in the House committee hearings, and I believe that it is being worked out among all the parties concerned.

The Council of Construction Employers respectfully urges early passage of S. 2305.

Thank you for hearing our views on this most important matter.

The CHAIRMAN. Thank you very much, Mr. Taylor. Excellent statement.

Let me just refer to, I am reading from your statement with respect to training of skilled manpower when and where needed. Now, you draw that from the section 6 standards for committee action?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. Where it is provided in 6(d):

"Promote practices consistent with appropriate apprenticeship training and skilled level differentials among the various crafts or branches"?

Mr. TAYLOR. Yes.

I was a representative on CISC, for example. I am now a member of the Construction Industry Collective Bargaining Committee, as a point of approach.

One of our concerns, particularly in the field of construction, is that construction of much-needed energy facilities, will have sufficient skilled manpower of the grades needed in the right places at the right time when they are needed. That is a big order.

And it is my belief that this committee would concern itself with those problems—I will not say it will dictate the numbers and so on, but it is obviously going to be a problem, once construction really gets under way.

And, of course, we have to consider other types of construction will be going on at the same time and so on.

So I believe that is a problem that some committee of Government, labor, and management will certainly have to concern itself with if the industry is going to do its job in the field.

The CHAIRMAN. You know, it has been mentioned many, many times here that one of the hopes of this legislation is that it will have a beneficial effect where there are distortions in the traditional relationships between the trades.

Now, you dealt with that in your statement, too. I am just wondering whether we could give a little more meaning for anyone reading the record as to just what you mean about distortions in the traditional relationships between the trades?

Mr. TAYLOR. It is rather traditional in the industry for certain groups of the trades, to approach the same area of compensation, wage rates, and so on.

A distortion in my viewpoint would be those trades traditionally—by traditionally, let's go back to 1960, that fairly stable period of 1960 to 1968, or further back—and there was a traditional relationship in the compensation of, say—let's say the various trades in the mechanical field. And let us say that in 1976, if this should come off, one of those trades negotiated would go out and negotiate a rate several dollars—I am not exaggerating—in excess of what it now has, even though it is in its traditional relationship to the other trades in a given

city. That would be to my notion a distortion, because the very next time negotiations came around, we would be faced with some very, very inflationary settlements.

The CHAIRMAN. Is this that you have just described part of the leap frogging?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. You figure this bill, if it becomes law, presents an opportunity to deal with that? Do you think it will deal with that?

Mr. TAYLOR. Well, I am quite certain that the committee members would do their best to persuade a union about to engage in that sort of inflationary settlement or management, it could be management too, to think long and hard about what it might do to the industry, to the community, and so on, unless there is some restraint, speaking hypothetically.

The CHAIRMAN. Could you give us a good example of what you consider the bad effect of leap frogging?

Mr. TAYLOR. I think it is inflationary.

The CHAIRMAN. No. But in a specific situation?

Mr. TAYLOR. I think there were some settlements on the west coast this year, particularly in the Northwest, which are going to have a very damaging effect on the other trades in the next negotiations.

I think, as I recall, the increase was $2 and something an hour for 1 year.

There are many, many other examples. I do not mean to be picking on them when some other areas—it may be a different trade—have also negotiated unstabilizing settlements. But that certainly was one example.

It happened to be a case where both the Collective Bargaining Committee tried to use persuasion, and the Council on Wage and Price Stabilization tried to persuade parties out there not to be quite as extravagant.

The CHAIRMAN. I think Secretary Dunlop expressed it this way, that with the organization suggested by this bill, the union will have to make the case in a committee of its peers.

Mr. TAYLOR. Right. And so will management, incidentally. It is not a one-way street.

The CHAIRMAN. Exactly. I am glad you added that.

Thank you very much.

[The following letter was subsequently supplied for the record:]

MECHANICAL CONTRACTORS ASSOCIATION
OF AMERICA, INC.

Suite 750, 5530 Wisconsin Ave., Washington, D.C. 20015
Tel. (202) 654-7960 TWX: 710-0423

September 10, 1975

The Honorable Harrison A. Williams, Chairman
Subcommittee on Labor
Committee on Labor and Public Welfare
U.S. Senate
Room 4232, Dirkson Office Building
Washington, D.C. 20515

Dear Chairman Williams:

On behalf of the Mechanical Contractors Association of America, Inc., (MCAA), a national organization of over 1,400 member firms which employ union labor, I have examined the proposed "Construction Industry Collective Bargaining Act of 1975" (S. 2305), suggested by Secretary of Labor John T. Dunlop, and wish to express our support for the legislation.

MCAA has participated in the Collective Bargaining Committee in Construction, established by President Ford at the suggestion of Secretary Dunlop last spring, and in its predecessor, the Construction Industry Stabilization Committee (CISC) to which Secretary Dunlop contributed significantly. We have been in favor of the fine efforts that Secretary Dunlop has made through these organizations to bring stability to the construction industry. The proposed legislation will continue and codify arrangements that have proven to be necessary, effective and workable through our past experience.

While this legislation is a positive step toward industry stability, we urge that in the near future a further review of all collective bargaining legislation as it affects the construction industry be undertaken. Both the Taft-Hartley and Landrum-Griffin Acts, which were written for other industries, should be re-examined in light of the needs of the construction industry.

The need for multi-employer certification is also becoming increasingly evident.

In summary, we hope you will promptly approve S. 2305, but we also hope that you will undertake the long-needed review of all aspects of collective bargaining legislation as it affects the industry and draft a new National Construction Industry Labor Act.

We request that this statement be made a part of the record of the hearings on this bill.

Sincerely,

Thomas F. Carty

Thomas F. Carty
President

TFC/pmf

The CHAIRMAN. This concludes until tomorrow morning at 9:30, when we will return.

[Whereupon, at 3:45 p.m., the subcommittee recessed, to reconvene at 9:30 a.m., Wednesday, September 17, 1975.]

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

WEDNESDAY, SEPTEMBER 17, 1975

U.S. Senate,
Subcommittee on Labor of the
Committee on Labor and Public Welfare,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:50 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

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

The Chairman. The committee will conduct the second and final day of hearings on S. 2305, Construction Industry Collective Bargaining Act of 1975.

This is an important bill which, if enacted, will revise the structure of collective bargaining in this vital industry.

Yesterday, the committee received testimony in support of the bill from Secretary of Labor John Dunlop. The Secretary's testimony emphasized that cooperation between labor and management is the key element of this bill.

Mr. Robert Georgine, president of the Building & Construction Trades Department of the AFL–CIO, also testified in favor of the bill. Georgine gave the committee some valuable insight into the operation of this proposed legislation from the perspective of the national labor organizations, which would participate in the reform process which this bill would establish.

We also heard important testimony from the Council of Construction Employers who supported the bill, and the Associated General Contractors who had reservations about the bill and suggested several amendments.

Today's witnesses will be Mr. Philip Abrams, president of the Associated Builders & Contractors; Mr. Robert Thompson, representing the National Chamber of Commerce; and Mr. William Besl, Crane & Rigging Association.

This is a return for Mr. Abrams and we appreciate his testimony before our committee.

STATEMENT OF PHILIP ABRAMS, PRESIDENT, ASSOCIATED BUILDERS & CONTRACTORS, INC.; ACCOMPANIED BY HOMER L. DEAKINS, JR., ESQ.; AND JOHN P. TRIMMER, EXECUTIVE VICE PRESIDENT

Mr. Abrams. Thank you, Senator.

With me is our counsel, Mr. Homer Deakins, and our executive vice president, Mr. John Trimmer.

My name is Philip Abrams. I am president of the Associated Builders & Contractors, Inc.

The association is comprised of some 9,000 member firms who are engaged in contract construction as general contractors, subcontractors, suppliers and associates. We have 47 chapter offices in 42 States, with members in 48 States.

Most of the association's members engage in a method of construction known as merit shop contracting, where union and nonunion contractors work in harmony on a common jobsite. The association also represents a number of members who operate under collective bargaining agreements.

I wish to take this opportunity to thank the committee for this opportunity to present our views on Senate bill 2305, the so-called Construction Industry Collective Bargaining Act of 1975.

As representatives of a major segment of the construction industry and particularly on behalf of merit shop contractors, we are here to tell this committee that we oppose this bill, and that merit shop contractors will be directly and adversely affected if it is passed. Let there be no doubt as to our position in this regard.

We oppose Senate bill 2305 on its own merits but, before dealing with this bill, I must make it clear that the construction industry has not made a deal to accept the "common situs picketing" bill in return for passage of this bill allegedly revising the framework of collective bargaining in the industry. Such a deal has been widely rumored, and the Secretary of Labor, along with many Senators, seem to be linking these proposals.

The evidence has convinced us that an attempt is being made to sell out the construction industry in return for a promise of union political support.

This bill is worthless in that it does not address itself to the problems of the construction industry; the "common situs picketing" bill would exacerbate the problems of the industry, and those who would trade off one bill for the other would sell out the industry. We demand that each bill be considered on its own merits.

The unprecedented haste with which Congress has chosen to act on this matter is another example of how some of the people charged with the leadership of this country are leaping to please the barons of labor with no consideration of the probable results of their action.

As we will point out in detail, this bill is poorly drafted, will not solve the problems of the industry, and creates a vast potential for abuse. However, the hearings in both the House and Senate have been held so rapidly that few of the people who would be affected by this measure have had an opportunity to analyze it or determine how it would affect them.

The problems of the construction industry have been with us for years and no piece of legislation will correct them overnight. The only explanation we can see for the attempt to steamroll this bill through Congress is the hope that it can be passed before the business community wakes up and the attempt by some politicians to gain favor with the building trade unions by giving them common situs picketing in time for a celebration at their upcoming convention.

Before explaining why the defeat of this bill is of such importance to merit shop contractors, I wish to outline its major provisions.

Secretary Dunlop has stated that the purpose of this bill is to revise the framework of collective bargaining in the construction industry. The bill supposedly would accomplish this objective by creating a new Federal agency called the Construction Industry Collective Bargaining Committee to which the parties to collective bargaining agreements in the construction industry would be required to give notice at least 60 days prior to the expiration or reopening of existing contracts. The committee could intervene in such negotiations, or it could request that national craft boards or national labor and national contractor organizations become involved in the dispute.

If the committee decided to take such action, no strike or lockout would be permitted within 90 days of the time the committee received notice from the parties.

Most significantly, the bill provides that should the committee request national labor and management organization to participate, no contract could be put into effect until it was approved by the national union. No similar veto power is given to national contractor organizations.

The bill provides that the no strike period can be enforced by an injunction but is silent on the issue of who will obtain such injunctions in the name of the committee, and nothing prevents giving notice to the committee more than 90 days before the expiration of a contract so that the cooling off period becomes an illusion.

The bill supposedly contains standards for the exercise of the committee's powers, but the standards are so broad that they are meaningless and significantly the standards do not mention major problems, such as inflationary settlements or contracts containing restrictive work practice provisions.

I have stated that merit shop contractors would be directly and adversely affected by this bill, but you are no doubt familiar with the claims by the Secretary of Labor that the bill concerns only union contractors.

In his testimony to the Senate, he cleverly but inaccurately indicated that the bill was a private matter between unions and union contractors when he said:

> The proposed legislation does not in any way apply to contractors who do not operate under collective bargaining agreements.

We have long been aware of the problems faced by union contractors who frequently work side by side with our members and whose work our members are frequently dependent on for the completion of their own. We have long realized that merit shop contractors would be directly affected by a bargaining reform bill and we were one of the first organizations to publicly comment on the Secretary's plan when we labeled the bill a "hoax" because it cannot be effective in solving the problems of the construction industry.

The Wall Street Journal reported that the Secretary, when questioned about our criticism, "dismissed that charge by noting the group is made up exclusively of non-union contractors who wouldn't even be covered by the legislation."

The truth of this matter is that the potential effect of this legislation on merit shop contractors is so great that it could have been drafted with our members in mind.

The important part of the bill is that it gives legal backing to the authority of the international unions to dictate the terms and provisions of local agreements. Section 5(c) of the bill provides that when the Construction Industry Collective Bargaining Committee takes jurisdiction over a dispute and requests the participation of the international unions:

> No new collective bargainging agreement . . . shall be of any force or effect unless such new agreement or revision is approved in writing by the standard national construction labor organization with which the local labor organization or other subordinate body is affiliated. Prior to such approval, the parties shall make no change in the terms or conditions of employment.

Under this provision it would be easy for an international union to insist on a subcontracting clause prohibiting subcontracting to merit shop contractors. Likewise, an international could insist on a clause requiring contractors to agree not to operate on an open shop basis in other jurisdictions or even prohibiting subcontracting to merit shop contractors in other jurisdictions. The groups who would suffer most from such provisions are the merit shop contractors—the competitors of the unions and union contractors who support this legislation.

More and more contractors will be forced to consider operating merit shops in many areas of the country as outrageous and inflationary union demands continue, and if common situs picketing is legalized, merit shop construction will become an even more desirable option for both contractors and the users of construction. The unions and, for that matter, the union contractors who support this bill see this type of power in the hands of the international unions as the way to shut the door of escape into a desirable and competitive method of operation away from excessive union demands and the problems of operating in the face of the threat of common situs picketing.

In other words, merit shop contractors and their employees would be more vulnerable to the powers granted in this bill, and it appears that the groups supporting this legislation have drafted a bill to restrict and limit their competitors in the construction industry.

Ordinarily, a union which conspires with an employer to limit or restrict competition would be subject to the antitrust laws, but section 5(d) of this bill eliminates any and all liability for such action. That section, which is important enough to warrant a close examination at this point, provides:

> (d) No standard national construction labor organization or national construction contractor association shall have any criminal or civil liability arising out of a request by the Committee for its participation in collective bargaining negotiaitons or the approval or refusal to approve a collective bargaining agreement. Nor shall any of the foregoing constitute a basis for the imposition of civil or criminal liability on a standard national construction labor organization or national construction contractor association.

The specific mention of both civil and criminal liability appears to eliminate any antitrust liability, and we urge this committee to thoroughly question the motives of those who included such a broad exemption from liability in this bill. This point bears reiteration—this

bill would give advance immunity from civil and criminal activity when conducted under the sanctions of the committee.

The bill would not solve the collective bargaining problems of the construction industry.

The motives of those who drafted and support this legislation become even more questionable when the total ineffectiveness of the bill is considered. It is a fair summary of Secretary Dunlop's statements on the matter to say that the highly fragmented nature of bargaining in the construction industry is the basic problem which this bill is designed to solve. This bill does not address itself directly to this problem, and Congress has been given no assurance that the bill would solve this problem, but both informal procedures and formal legal machinery now exist which could be used to consolidate and broaden bargaining units in the construction industry.

Almost all the international building trades unions have the power to intervene in local negotiations. In fact, the internationals now commonly bargain with a number of companies on a nationwide or even a multicraft basis. If any benefit can be obtained from the participation of international unions in local negotiations, those benefits are available now without the necessity of additional legislation.

It also must be pointed out that the National Labor Relations Board has the power to face the problem of the fragmented bargaining structure without the necessity of new legislation. Congress has given the Board the power to define units appropriate for collective bargaining, and included in that power is the authority to order bargaining in broad, even multistate, geographic areas and the power to order bargaining on a multicraft basis.

NLRB certifications are comparatively rare in the unionized sector of the construction industry, but unions or contractors could petition the Board to certify broad bargaining units, thereby eliminating the fragmented nature of bargaining in the industry.

The Board also has the power to reconsider or amend existing certifications. The proponents of this bill have ignored the fact that the NLRB already has the power and the expertise to resolve the problems outlined by Secretary Dunlop.

This bill draws bystanders into collective bargaining. The Associated Builders and Contractors has what may be a unique reason for opposing this bill.

The proposed legislation before this committee would draw us, against our will, into collective bargaining.

Our association is composed of both union and nonunion employers, but our national association and our 47 chapters are prohibited by our internal regulations from representing employer members in collective-bargaining negotiations.

However, section 4(a)(2) requires employers to serve notice upon all national construction contractor associations with which they are affiliated, and section 4(b) requires that association to furnish the committee with copies of all notices served upon them. Under section 5(b) of the proposed bill, the committee would have the authority to request that association to participate in the negotiation between its union employer members and the local union.

Neither the ABC, nor our union members, nor other associations in our position want us to engage in collective bargaining. We believe that the Secretary of Labor and the unions, both national and local, would also prefer for us not to engage in collective bargaining. We respectfully request that the bill be modified by adding language after the first sentence of section 4(a) (2) as follows:

Unless neither the aforementioned employer's national or local construction contractor association does not accept the delegation of collective bargaining authority in the normal conduct of business on behalf of its members.

We wish to make clear that the addition of this language will not make this bill acceptable to us under any conditions but it would clear up what we consider to be a serious ambiguity in section 4.

In summary, we have labeled the "Construction Industry Collective-Bargaining Act of 1975" a "hoax," and a hoax it is. For months, the construction industry listened to Secretary Dunlop's promises of a proposal for effective reform of the collective-bargaining process in construction only to be presented with this bill.

The label "ineffective" does not adequately describe this bill. It is true that the bill fails to address the major problems faced by the industry and that the wording is so vague that it is likely to create excessive amounts of litigation. More importantly, the bill creates a new potential for abuse of power by the international unions and licenses wholesale violations of the laws, including the antitrust laws.

The bill is a hoax, and it would have the effect of selling out the construction industry and the country to satisfy the selfish desires of the big unions and the big union contractors.

For these reasons, we oppose Senate Bill 2305.

The CHAIRMAN. You just flatly oppose the bill. You are not suggesting any changes here? You are just flatly opposed to the bill, is that correct?

Mr. ABRAMS. The only change we suggested would be the one that would obviate the necessity for our association to become involved in the collective bargaining process.

As we understand it, the bill must be accepted or rejected as it stands and is not subject to amendment.

The CHAIRMAN. Where did you get that idea?

Mr. ABRAMS. We got that idea from the Building Trades Department who said that any changes to the bill would not be acceptable to them.

The CHAIRMAN. You have been here before. You have been around. It is incredible what you just said.

Mr. ABRAMS. That is our understanding of the political facts behind the bill.

The CHAIRMAN. Well, your understanding is so at variance with the true facts that it is, I say, incredible.

Wait until you see the amendments that come out of this committee and then what possibly comes to the floor. We will have all kinds of amendments offered.

That is not particularly important, the fact that you are in total error there. I would guess that you sitting where you are, not at this table, but in the industry, would prefer the status quo, things as they are right now?

Mr. ABRAMS. We would prefer the status quo, things as they are right now. We would prefer that reform of the collective-bargaining process come up on its own without being linked to common situs picketing.

The CHAIRMAN. Just forget common situs picketing. We are talking about the structure of collective bargaining. Just forget common situs.

You have woven these together somehow, and I am sure a lot of us do not. But just dealing with the structure of the operational mechanisms for collective bargaining in construction, given this bill or nothing, you have said you would rather have nothing?

Mr. ABRAMS. That is right.

The CHAIRMAN. Do you have any idea of how the structures can improve collective bargaining to the point where we will have more peaceful resolution than resolution through confrontation?

Mr. ABRAMS. Well, Senator, I think you and I discussed that the last time I testified here.

We do have, and we had at that time on July 10, some recommendations for what could be done to redress the economic imbalance between management and labor at the construction collective-bargaining table. We do not think this bill accomplishes that.

Some of the suggestions we made on July 10 were a common expiration date of January 1 for all construction collective-bargaining agreements, outlawing sweetheart agreements, outlawing retroactive clauses——

The CHAIRMAN. What sweetheart agreements are presently allowed? Perhaps you had better define what you mean by sweetheart agreements.

Mr. ABRAMS. Be glad to, Senator.

A sweetheart agreement, as it is looked upon in the construction industry, is one where, when a union and management, either single employer or multiemployer group, is locked in a collective-bargaining confrontation, a sweetheart agreement occurs when one union contractor—usually a large national union contractor—will come in and sign an agreement that they will pay what management is offering at that particular point in time, plus agree to pay retroactively whatever increase is approved after the collective-bargaining dispute is settled.

The result is that the employer association that is negotiating collective-bargaining agreement is completely weakened because their ranks are split.

A union contractor signs an agreement before the fact, continues to work, provides employment for many of the men who are on strike and who, therefore, do not suffer any economic pressure and are not as apt to accept a reasonable collective-bargaining agreement.

Do I make myself clear?

The CHAIRMAN. Well, not to me, but let me just see if it is clear to staff professionals.

[Short pause.]

The CHAIRMAN. I think we had better run through this again. Just run through your sweetheart agreement again.

Mr. ABRAMS. I will give you a concrete example.

In the negotiations last year in Massachusetts, where I come from, the AGC of Massachusetts was negotiating on behalf of union general contractors with specific building trades unions.

During those negotiations, and while the strike was in process, large national contractors signed an agreement with the union saying that they would pay what management was offering now, 50 cents an hour, for example, and agreed to pay retroactively whatever is finally settled between the building trades and the AGC when the strike is settled, allowing that national contractor to work during the strike, and split the ranks of management and provide employment for a great many of the members of the union who are supposed to be undergoing economic hardship during negotiations.

The CHAIRMAN. That is what I thought you said. That is your definition. I think you are alone in this, or people similarly situated.

Normally, sweetheart, as I have been led to believe, and understood it, is where labor organization agrees to certain things with management, with the contractors, that objectively can be viewed as less than what the labor organization should be getting for labor, but there is something quietly given to the individual in negotiating.

That is the way we have always looked at sweethearts. In other words, labor leaders selling the men out or people out for some gain for himself.

Mr. ABRAMS. No implication of that.

The CHAIRMAN. That is what sweetheart normally is considered.

Mr. ABRAMS. Well, the construction connotation is, I believe, different.

The CHAIRMAN. You are saying here you have got competition between contractors, and a contractor is getting his labor agreement by agreeing with the union that the union scale will be paid retroactively after it is settled by an organization.

Mr. ABRAMS. It is a break in the ranks of the union employers.

The CHAIRMAN. That is normally not considered sweetheart. It is a competitive practice on the management side of the industry. But it is not normally sweetheart.

Mr. ABRAMS. As one who is not involved in that particular collective-bargaining process, it is one of the areas that does severely weaken my union contractor competitors in their negotiations with the building trades.

Some of the other suggestions we made would be to limit ratification voting on collective-bargaining agreements to those union members who are not working during the strike. We have had several instances, notably the plumbing strike in San Francisco, where upwards of two-thirds of the members of the local were working when the strike vote was taken. They voted against accepting the agreement because they were not under any economic pressure, which is the basis of collective bargaining.

We suggested repeal of section 8(e), which allows preservation of work agreements, subcontracting agreements and section 8(f), and we also suggested that local union agreements supersede national agreements among contractors.

Here, again, you have the problem where a national contractor comes in to a local area and disrupts the process of local collective-

bargaining because he has an agreement signed on the national level which supersedes the local agreement.

We have also reviewed some of the suggestions that the Associate General Contractors put forth, and we think they are constructive and would help solve some of the problems in the collective-bargaining sector of the construction industry.

But when you see the basic problem in that sector of the industry as being economic imbalance of the bargaining table, and we do not see anything in this bill which is going to redress that balance.

The CHAIRMAN. Do you see any merit in the principle that was developed here in this bill of lifting the discussions in collective bargaining above the local level into a broader level——

Mr. ABRAMS. The only teeth in the bill on a national level——

The CHAIRMAN. First, without the teeth, just getting out of the local, local situation where it has been described there of having economically inflationary effects through the leapfrogging and whipsawing action because agreements were reached at the local level and there is competition within the trades to see who gets it, do you see anything in that principle of lifting it to a higher level for discussion and deliberation, the bargaining process?

Mr. ABRAMS. We think the converse would be true in many instances.

For instance, I think you will note that the Sheetmetal Contractors Association has opposed this legislation, mainly because the Sheetmetal International Union has been trying to use pressure to force the locals and the union sheetmetal contractors to accept the SMACNA plan, which could be debated on its merit, and find people on both sides of the issues.

The fact is, with this vehicle, well, we think this is a vehicle for international unions to force their locals to accept subcontracting agreements where they refuse to subcontract to Merit Shop Contractors and to force other conditions upon locals which, as we understood the intent of the Landrum-Griffin Act was the reverse, so locals would have some more independence from international control.

The CHAIRMAN. I just think probably there is no way, corrective way, for us to be in harmony on this because it seems to the Secretary of Labor and it seems to me that if you accept the desirability of having fair rules for both parties in construction, to have the opportunity to bargain with each other for the terms of the employment, it is better if you get out of the local contest and get to a somewhat more objective plane and relate any given disputes to the economy more broadly. That is the way I understand Secretary Dunlop's proposal here.

It should have the beneficial effect of depressing to some extent, to a good degree, the temptations to go to extravagant increases in agreements.

I guess the most difficult examples that are cited are the recent west coast examples of some extraordinary increases in the hourly wage, for example, and to get the broader communities subduing some of the local temptation to go to that outer limit or beyond in their demands.

Mr. ABRAMS. I think we pointed out in our testimony that the international unions now have authority to intercede—in most cases have authority to intercede in local collective bargaining disputes, and they have not taken the opportunity——

The CHAIRMAN. That is true, if they have the authority, it has not been exercised. We understand that this encouragement under law would be helpful.

You, even if they did, would not approve and feel it beneficial for the internationals to be involved?

Mr. ABRAMS. We think the politics, the union politics of the matter are going to prohibit the international from taking effective action against the local, number one.

And, number two, we see it as, to reiterate, an opportunity for internationals to exert control and to force provisions upon their locals which the local unions might find abhorrent.

You have 17 international unions you are dealing with, and some of them, I would hope, would act responsibly; some of them might not. I think you are relying on the opposite of what human nature would expect you to rely on, and that you are relying on international unions to hold down practices which their locals have been promoting and which have been apparent, and they have had authority for a number of years——

The CHAIRMAN. You were quite free earlier in your testimony in speaking of motives, et cetera, of politicians.

I am a politician, and I am on this bill, as you know, and this idea of getting, on page 3, last sentence, top of the page, this all being put together in time for a celebration at an upcoming convention, well, I will have to confess that maybe I am a slow-witted politician, but that one had not occurred to me.

Maybe some faster minds around here than mine came up to that conclusion, but it sure got by me.

You have educated me. If you believe in it, it would be a nice thing to have it done by the convention. But it surely had not occurred to me.

Senator Javits.

Senator JAVITS. Mr. Abrams, I notice at the top of page 9 of your statement you say,

> Our association is composed of both union and non-union employers, but our national association and our 47 chapters are prohibited by our internal regulations from representing employer members in collective bargaining negotiations.

Now, are both those facts true?

In other words, your Association has union and non-union employers and your regulations prohibit you from acting in collective bargaining negotiations?

Mr. ABRAMS. Yes, they are, Senator.

Senator JAVITS. Now, what is a merit shop contractor?

Is he a union or nonunion contractor?

Mr. ABRAMS. A merit shop contractor may be union or he may be nonunion. He is a contractor who operates with union and nonunion employees, union and nonunion subcontractors, working together in harmony, awarding contracts on the basis of merit to the lowest resonsible bidder.

If he is a union contractor he is living up to his collective bargaining agreement, and if he is not a union contractor, then rewarding his employees on the basis of merit, paying higher wages to those who produce with the highest productivity and quality, and lesser wages to those who just hold their own in the industry.

Senator JAVITS. Is a merit contractor himself a man who has only union help?

You are talking now about the subcontractor, and the general contractor, I suppose. Are those the only people who are merit contractors?

Mr. ABRAMS. No.

Subcontractors are merit contractors, and subcontractors also subcontract. Some of them have union agreements in one area and do not have union agreements in other areas.

Senator JAVITS. Now, is it a fact that the employees of the general contractor are nonunion?

Mr. ABRAMS. Not necessiarily. We have union contractors, union general contractors, probably 90 percent of our members do not have collective bargaining agreements.

Senator JAVITS. In other words, the preponderant membership is nonunion?

Mr. ABRAMS. That is correct.

Senator JAVITS. But is it a fact that you call a merit shop contractor anyone who is in your Association, whether he is union or nonunion?

Mr. ABRAMS. And who subscribes to our philosophy.

Senator JAVITS. Why should not other contractors outside your association be merit shop? What is so big about being a member of your association?

Is that the reason for being merit shop?

Mr. ABRAMS. No. It is prescribing to the philosophy, Senator, not the fact that he belongs to an association. Other contractors outside the association, especially if they have rigid collective bargaining agreements, are not capable of awarding contracts to the lowest responsible bidder.

Senator JAVITS. Now, the reason for my questions is found at page 5 of your statement, the bottom of that page, where you say that under this provision it would be easy for an international union to insist on a subcontracting clause prohibiting subcontracting to merit shop contractors.

An international could insist on a clause requiring contractors to agree not to operate on open shop basis in other jurisdictions or prohibit subcontracting to merit shop contractors in other jurisdictions.

Now, Mr. Abrams, has anything like that happend? You have both union and nonunion contractors. You have contractors who, in some places, are union and, some places, nonunion.

Has any such prohibition ever been put into effect?

Mr. ABRAMS. Oh, yes, sir.

A recent decision of the Supreme Court in the *Connell* case found that it could be an antitrust violation. These standard agreements have been rampant and probably apply to 50 percent of collective bargaining agreements in the country.

Senator JAVITS. If they have, what change is this law going to make?

Mr. ABRAMS. It will allow international unions to force it upon 100 percent of the collective bargaining agreements in the country.

Senator JAVITS. There is such a situation and you think it will be worsened by this provision?

Mr. ABRAMS. Yes, sir.

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Senator JAVITS. Notwithstanding Secretary Dunlop's as certain that it will not affect the nonunion contractor when he is operating on a nonunion basis.

Mr. ABRAMS. We are talking about merit shop contractors, working on sites, mixed union and nonunion.

Senator JAVITS. I am talking about that, too.

Notwithstanding that assertion, you say it will worsen a situation that is already 50 percent that way anyway?

Mr. ABRAMS. Absolutely.

Senator JAVITS. I just want to understand your position.

Now, you speak, on page 7, of informal procedures and formal legal machinery now existing which could be used to consolidate and broaden bargaining units in the construction industry.

Will you tell us in detail what you have in mind?

Mr. ABRAMS. I will let my counsel talk about it since I am not an attorney. It is beyond my expertise.

Mr. DEAKINS. Senator, basically what we speak of in this regard is that the National Labor Relations Board, under the existing provisions, the provisions of the National Labor Relations Act, has the authority to define appropriate units, and that agency today has the authority, if it sees fit in the exercise of its expertise and discretion, to broaden existing collective bargaining agreements in the construction industry. That is existing.

This bill, as I read it, does not specifically deal with the question of fragmentation which is one of the major problems in the construction industry bargaining. This bill does not deal with that. It does not broaden the geography covered by collective bargaining agreements. It does not get into multicraft bargaining.

The National Labor Relations Board, and according to the Secretary of Labor, the way to get at this problem is to deal with the question of fragmentation, and the National Labor Relations Board can deal with that problem today.

It is not, but it has the power to.

Senator JAVITS. Is there a reason why it has not? Has it cited any cases giving the reason?

Mr. DEAKINS. No, Senator.

The National Labor Relations Board has followed a general principle for many years that separate craft bargaining will be followed in the construction industry. The legislation does not specifically require that.

Senator JAVITS. Frankly, like Senator Williams, I am not intimidated about the diatribe about politicians. I am with Senator Williams the principal sponsor of these bills. I will stand and deal with that question in a public forum, and I think we can maintain our bona fide faith and ability to legislate with a lack of prejudice. I waive that aside and am not interested with those observations either way. I think they are in bad taste, without evidence, but nonetheless that is your privilege.

I am interested in the substance of the nonunion contractor's position.

My feet are not fixed in concrete on this or any other bill. If there are amendments that are legitimate and deserving, I am perfectly

willing to examine them. I have told that to nonunion contractors in my State, who are substantial in number in the jobs they do, and I will tell it to you. I am really interested in the effect of this legislation.

To me, the key point, the central point, seems to be the challenge to the Secretary's assertion, which I will put in my own words, that it is neutral on nonunion contractors.

You say it is not neutral; that, in effect, it will work materially to their harm. I will examine that very carefully and with an effort to ascertain whether what you say about the National Labor Relations Board has any basis in law or in fact and, secondly, and pragmatic value, and the reasons.

If you would like to, sir, and I think you should, submit a memorandum to us in detail on your argument on that point. I will read it very carefully and consider it carefully and consult with others about it.

Mr. DEAKINS. Senator, we would be glad to do so.

Senator JAVITS. Will a week do it?

Mr. DEAKINS. Yes, sir.

Senator JAVITS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Abrams, and your associates.

Mr. ABRAMS. Thank you.

The CHAIRMAN. Our next witness is Robert Thompson, chairman, Labor Relations Committee, National Chamber, and senior partner in the law firm of Thompson, Ogletree & Deakins of Greenville, S. C.

Proceed with your statement in any way you want to present your viewpoints.

STATEMENT OF ROBERT T. THOMPSON, CHAIRMAN, LABOR RELATIONS COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY RICHARD B. BERMAN, DIRECTOR OF LABOR LAW, CHAMBER OF COMMERCE OF THE UNITED STATES; AND MELVIN HUTSON

Mr. THOMPSON. Mr. Chairman, we have a fairly brief statement. I would like the privilege of reading it. I will be delighted to have an opportunity to answer any questions at any time.

I have with me Mr. Melvin Hutson, associate in our law firm, and Mr. Richard Berman, director of labor law, Chamber of Commerce of the United States.

My name is Robert T. Thompson. I am a partner in the law firm of Thompson, Ogletree & Deakins of Greenville, S.C., and I am chairman of the Labor Relations Committee of the Chamber of Commerce of the United States and a member of the Chamber's Board of Directors.

I am appearing before this committee on behalf of the Chamber, which is the largest association of business and professional organizations in the United States, and the principal spokesman for the American business community. The National Chamber represents over 3,500 trade associations and chambers of commerce. It has a direct membership of over 48,000 business firms and has an underlying membership of approximately 5 million individuals and firms.

On behalf of the National Chamber, I wish to thank the committee for this opportunity to present our opposition to the Construction Industry Collective Bargaining Act of 1975, S. 2305.

I am familiar with the construction industry. In our practice we represent a large number of construction firms, and we are labor counsel for the Associated General Contractors, Carolinas branch, which has over 2,000 members.

The business community is vitally concerned with collective bargaining in the construction industry. Disruptions in construction due to labor disputes touch the lives of every citizen. The skyrocketing costs of construction ultimately are borne by the users and the general public.

We are discussing a problem national in scope. If the solution lies in legislation, then all affected interests should be heard. If the solution lies in legislation, then we respectfully submit that the bills which are now being rushed through the Congress are not the answer.

At the outset let it be said that the "steamroller" manner in which this proposed legislation is being handled in the Congress and the obvious link between this bill and the bill which would legalize secondary boycotts in the construction industry, S. 1479, is shocking. It has been said repeatedly that this bill is the quid pro quo for enactment of "common situs picketing" legislation. There is absolutely no justification for such an arrangement.

Furthermore, there is absolutely no justification for the railroading of this proposed legislation through the Congress under any circumstances.

Collective bargaining has been going on in the construction industry for decades. While many of the settlements being negotiated are outrageously excessive and no doubt highly inflationary, they did not exactly appear overnight. To be sure, the unionized sector of the construction industry has its problems, but they are not new.

The fragmentation of the industry and the divisions of labor along craft lines date back for generations. This problem is too complex and its implications are too far-reaching to be dealt with by the Congress in such a superficial, cursory fashion. A matter of this importance demands more careful consideration and study.

If there is to be legislation, and we seriously question the need for this type legislation, then it must be precise, it must be backed up by thorough and appropriate legislative history, and it must contain carefully devised safeguards against abuse of power.

If, in fact, this bill is being considered or dealt with as a "trade-off" for "common situs picketing" legislation, then we repudiate the deal. Representatives of the chamber have appeared before this committee to state its stringent opposition to "common situs picketing" and our position on that bill has not changed.

"Common situs picketing" legislation unquestionably would cause a dramatic increase in the cost of construction and an equally dramatic decrease in productivity and efficiency.

As we have stated before, the very idea of enhancing the power of the building trades unions, local and national, at a time like this, and in the light of the inordinate power they now possess, borders upon the absurd. The possibility of legalized secondary boycotts is a grave con-

cern of businessmen. We want to make certain that it is clearly understood that no bill purporting to restructure construction industry collective bargaining could be a sufficient trade-off for legalized "common situs picketing."

The purpose of this bill, as stated by Secretary of Labor Dunlop, is to revise the structure of collective bargaining in the construction industry. The bill creates a new Federal agency called the Construction Industry Collective Bargaining Committee.

The parties to collective bargaining agreements in the construction industry are required to give notice to the committee 60-days prior to the expiration or reopening of existing contracts, and the committee may assert jurisdiction and intervene in such negotiations, or it may request that national craft boards or national labor and management organizations become involved in the dispute.

In the event the committee intervenes in a dispute, no strike or lockout would be permitted within 90 days of the time the committee received notice from the parties. In the event the committee requests national labor and management organizations to participate, no contract could be put into effect until it is approved by the national labor organization.

The preamble of S. 2305 provided, in part, as follows:

Findings and Purposes. Sec. 2(a) The Congress finds and declares that the legal framework for collective bargaining in the construction industry is in need of revision and that an enhanced role for national labor organizations and national contractor associations working as a group is needed to minimize instability, conflict and distortions, to assure that problems of collective bargaining structure, productivity and manpower development are constructively approached by contractors and unions themselves, and at the same time to permit the flexibility and variations that appropriately exists among localities, crafts and branches of the industry.

These are rather broad general assertions which bear careful scrutiny. Upon what or whose authority can it be said that "an enhanced role for national labor organizations and national contractor associations working as a group is needed . . ." for any desirable purpose?

There is no data bank or informational source or factual support for such a boldfaced assertion. If you examine the proposed legislation, you quickly find that the enhancement of the role of the "national contractor association" more or less got lost in the shuffle. We are not here to advocate otherwise in that regard.

However, we seriously question and challenge the proposition that there is a need for legislation to enhance the role for national labor organizations in construction industry collective bargaining. We further question the proposition that the high sounding, if somewhat vague, goals of minimizing "instability, conflict, and distortions, to assure that problems of collective bargaining structure, productivity, and manpower by contractors and unions themselves * * *" can be achieved in any way through this type of legislation. It sounds good, but who can say with any degree of authority that it will work toward those goals.

Almost all international building trades unions now have the power to intervene in local disputes if they choose to do so. Any benefits that could be obtained from the intervention of internationals into local negotiations could be accomplished without additional legislation. The

extent to which the present power to intervene, and even veto local settlements, is not exercised by the international unions, no doubt, is dictated by internal union political pressures.

The Dunlop bill will not remove these internal political pressures, and it leaves participation in local negotiations by the international unions entirely optional. Therefore, it is unreasonable to expect any additional benefits will be obtained from the statutorily sanctioned participation of international unions in local negotiations.

The power this bill would give to national labor organization is a veto over changes in local working agreements. As stated, many of these organizations already have this power by virtue of their own constitutions. However, they just do not choose to exercise it very often.

Section 5(c) of the bill provides that when the Construction Industry Collective Bargaining Committee takes jurisdiction over a dispute and requests the participation of the international unions:

> No new collective bargaining agreement * * * shall be of any force or effect unless such new agreement or revision is approved in writing by the standard national construction labor organization with which the local labor organization or other subordinate body is affiliated. Prior to such approval, the parties shall make no change in the terms or conditions of employment.

No one can predict how the power which this legislation grants would be used by the international unions. What we do know is that, after the hearings of the so-called McClellan committee in 1957,[1] Congress determined that excessive power in the hands of international unions was so dangerous that Congress passed the Labor Management Reporting and Disclosure Act of 1959, limiting the power of international unions and including the union members' bill of rights. S. 2305 represents a step in the opposite direction, a step which increases the probability of the unreasonable abuse of power by the international building trades unions.

We will not attempt to predict the manner in which the power of the internationals created by this bill could be abused by an international wishing to take action against an unpopular local union or a local union which appears to have the misfortune of being led by political opponents of the international officers.

Suffice it to say that the power would be there as a matter of law.

We do feel it is appropriate to indicate some ways in which this legal weapon could be used against the employers. The power to veto a settlement agreement should be equated with the power to dictate the terms of a collective bargaining agreement, and this bill contains no limitation on the type of terms which an international union could insist upon being included in local contracts.

For example, the operating engineers could refuse to approve any contract which did not contain a provision requiring that an operator be assigned to automatic equipment. The painters could veto any local settlement which did not include a prohibition on the use of rollers to apply paint. Examples such as these are endless.

There seems to be an impression that this bill would automatically serve to restrain excessive wage settlements and eliminate restrictive work practices and featherbedding in the construction industry. There

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[1] Senate Committee on Improper Activities in Labor Management Relations, 1957–58.

is no mandate in the bill to this effect, as AFL–CIO President George Meany recognized at a recent press conference, commenting on the bill, "There's really nothing mandatory in it."

And in response to a question on wage levels, Mr. Meany noted that "they don't have the power to decide [what is reasonable]." [AFL–CIO news release, Aug. 31, 1975, p. 7.]

There certainly is no restriction upon the veto power to be given to the internationals to this effect. There is just as much power to dictate higher settlements and more restrictive work practices as there is to do the opposite. We are being asked, in effect, to assume that everyone who exercises this newly created legal power will do so with high purpose and the best intentions. Even if this Utopia could be achieved, there is plently of room for honest disagreement over what is good for the trade, the industry, or the society.

Inherent in S. 2305 is a proposition that those who have exercised some of these powers in the past have acted irresponsibly and contrary to the public interest. Who is to say that others with even more power can be expected to do otherwise?

An international union could insist on a subcontracting clause which prohibits subcontracting to open shop contractors. Likewise, an international could insist on a clause requiring contractors to agree not to operate on an "open shop" basis in other jurisdictions or even to subcontract to "open shop" contractors in other jurisdictions. The potential for abuse of the nonunion contractor or even contractors who perform work in some areas on a nonunion basis is very real.

Open shop contractors are becoming more of a competitive threat to union contractors as they expand the types of construction they perform and the areas in which they operate.

Likewise, the international unions are faced with increasing competition for jobs for nonunion workers who make up a majority of the work force in construction in this country. Open shop contractors, subcontractors, and their employees could suffer most from the exercise of this new power given to the international unions. The unrestricted power proposed by this bill could and would serve as a weapon to limit competition in the industry.

The basic defect in this bill connot be cured. Only a few possibilities exist for the improvement of the major deficiencies in this proposed legislation, and none of the possibilities is acceptable to any of the parties to collective bargaining, since they are gravitated toward governmental dictation of the terms of collective-bargaining agreements. Neither Congress nor the American public would find the cure acceptable if we are to maintain a system of free collective bargaining.

It has long been national labor policy that the parties to collective bargaining cannot be forced to agree to anything, but this bill with the power it gives to the Construction Industry Collective-Bargaining Committee represents a major step in the direction of Federal dictation of the terms of collective bargaining agreements.

Even if it appeared to be desirable to regulate collective bargaining in the construction industry on a short-term basis, this bill would establish a precedent for Federal dictation of the terms of collective-bargaining agreements which could easily be extended beyond the construction industry.

This bill is both an extension of the power of the Federal bureaucracy and an extension of Federal regulation. The Congress is aware of the public sentiment against the further extension of Federal regulation into additional areas of the lives and business of Americans. This expansion of the power and scope of Federal regulation is reason enough to oppose this bill.

As the bill is written, the only power of this agency is to jawbone in an attempt to accomplish its goals. Already cries have gone up for the addition of enforcement powers to this legislation, and eventually Congress will be faced with proposals to make the agency permanent and to give it the power to force the desires of the bureaucracy upon the parties to collective bargaining. This always seems to be the trend once a regulatory agency is established. Why open that door again?

Congress is acting with such haste that it could easily pass a vague and poorly written bill which will be widely misunderstood. Needless to say, the potential for clarifying litigation, as the bill is now written, is breathtaking.

One of the most glaring examples of misunderstanding about this bill is the widely reported 30-day cooling off or no-strike period. In his September 1975, press release, Secretary of Labor Dunlop stated that, after receiving the required notice from the parties, the collective-bargaining committee may elect to take jurisdiction of the matter, "in which case any strike or lockout is deferred for up to 30 days past the expiration or reopening date."

The language of the bill itself does not support the widely held belief that this bill would create a 30-day cooling off period. The parties would be required to give notice at least 60 days prior to the expiration or reopening date of the contract, and if the committee takes jurisdiction, no strike or lockout may take place within 90 days following the date on which the committee was notified. But the committee cannot delay a strike because nothing in this bill prevents a party from giving notice 90 or even 120 days prior to the expiration of the contract.

The standards under which the committee could intervene in a dispute provide another glaring example of the vague and imprecise language of the bill.

Section 6 provides that the collective bargaining committee can intervene in a dispute if, in its sole discretion, it believes such act would:

> (a) facilitate collective bargaining in the construction industry, improvements in the structure of such bargaining, agreements covering more appropriate geographical areas, or agreements more accurately reflecting the condition of various branches of the industry;
>
> (b) promote stability of employment;
>
> (c) encourage collective-bargaining agreements embodying appropriate expiration dates.
>
> (d) promote practices consistent with appropriate apprenticeship, training and skill level differentials among the various crafts or branches;
>
> (e) promote voluntary procedures for dispute settlements; or
>
> (f) otherwise be consistent with the purposes of this act.

The only reasonable reading of this language is that the committee may take action in almost any situation which may arise if it, in the exercise of its sole—and I emphasize sole—discretion, decides to assert its jurisdiction.

The legal effect of an assertion of jurisdiction raises many questions. The bill provides very limited enforcement procedures, apparently to the exclusion of remedies already available under other laws. There is great potential for conflict with established principles, practices, and procedures under the National Labor Relations Act, as amended.

The simple question of who will be authorized to bring actions in court is at best uncertain. The restrictions placed upon a court reviewing the conduct and activities of the committee are about as broad as can be written and amount to practically no review at all.

It is shocking to find a total absolution of civil and criminal liability provided to the national unions and contractor groups arising out of participation in the implementation of the proposed law. This provision alone should raise clear warning as to the probability of abuse of the power granted national unions by this bill. The unions already enjoy too many immunities from the laws which apply to others.

The rulemaking powers granted to the committee are another example of the unacceptable language of this bill which imposes no limitations and no guidelines on the power of this committee to adopt and enforce rules. It is not even indicated whether the committee would be required to publish its rules in the Federal Register. The rulemaking power granted the proposed committee is as broad as Congress can grant. The point is that this bill creates a new agency with broad powers but no standards to be applied in determining when or how these powers will be exercised.

In his statement to the House Committee on Education and Labor on a similar bill, Secretary of Labor Dunlop characterized the collective-bargaining structure of the collective industry as highly fragmented. It is a fair summary of his statement to say that the fragmented nature of bargaining is construction's basic problem which this bill is designed to solve. But S. 2305 does not directly address itself to this problem and Congress has been given no assurance that the bill will solve this problem. No such assurance can be given. This bill is completely unnecessary.

Both informal procedures and formal legal machinery now exist which could be used to consolidate and broaden bargaining units in the construction industry if the parties desire to avail themselves of such machinery.

As pointed out above, the international unions have the power to intervene in local negotiations. In fact, the internationals now commonly bargain on a nationwide basis with a number of construction companies. Furthermore, these national unions have exercised their existing power and have bargained with employers on a multicraft basis. This procedure of negotiating directly with the international unions on a multicraft basis is not uncommon and could be expanded to solve the problems Secretary Dunlop sees in the construction industry. There are many other nonlegislative possibilities for improving bargaining in the construction industry if the effort were made.

Those who believe that formal legal machinery is necessary to solve these problems should review the powers of the National Labor Relations Board before they advocate additional legislation. The Board has the power to determine and define units appropriate for collective bargaining. The Board has the power to order bargaining in a broad geographic area—even an area covering several States, and the Board

has the power to order bargaining on either a single craft or a multi-craft basis.

Few NLRB certifications exist in the construction industry but, under the Board's rules, the unions or the employers could petition for a certification that would elimiante or reduce the fragmented nature of bargaining in the industry.

In the haste to pass this bill, the fact that the NLRB already has the power and the expertise to go a long way toward solving the legal problems of collective bargaining in the construction industry has been overlooked or ignored.

The parties themselves have the power and the ability to solve their own problems without another law and another government program.

In conclusion, I wish to state again that S. 2305, considered on its merits, should not be enacted. It is wholly unsatisfactory, it is vague and poorly drafted, and it needlessly expands the scope and power of the Federal bureaucracy.

From the point of view of the users of construction who ultimately bear the cost of collective agreements in the construction industry, this bill is completely unacceptable because it will increase the cost and price of construction without offering any offsetting solution to the real problems of the industry.

If the true purpose behind this bill is to obtain passage of the common situs picketing bill, then it should be rejected forthwith.

The entire economy would be adversely affected by common situs picketing and we cannot sit quietly by while a few people make arrangements to assure passage of legislation which is unacceptable to the business community and adverse to consumers' interests.

We strongly urge this committee to stop the steamroller long enough to consider this bill on its merits, and then defeat it because it lacks worth.

The CHAIRMAN. Thank you, Mr. Thompson.

Could I ask one question about your situation speaking in a representative capacity for the chamber? You are chairman of the Labor Relations Committee of the Chamber of Commerce of the United States.

How long have you had that position?

Mr. THOMPSON. Approximately 2 or 3 years. Prior to that, I served approximately 10 years on the committee.

The CHAIRMAN. In other words, you have been active in the Labor Relations Committee of the Chamber since the mid-1960's?

Mr. THOMPSON. I have been active in the labor relations program of the Chamber for at least 20 years in one capacity or another.

The CHAIRMAN. I am glad to hear that. Obviously you are a data bank of information on labor management relations and problems in construction out of that 20 years of background. You know what you are talking about.

Mr. THOMPSON. Well, we hope we do, yes, sir. And I hope I do.

The CHAIRMAN. And others do, too. I am not stating that we are that degree of authority here, but we certainly have a Secretary of Labor that has been deeply involved in all aspects of labor management problems and suggested solutions for problems for, I guess, it is some 30 years, Secretary Dunlop.

And while I recognize that you feel that there is no data bank or informational source, factual support for boldfaced assertions for findings and purposes of this legislation in section 2(a), the closest thing that I know of to a data bank or informational source of authority is the Secretary of Labor. I will tell you why I say that.

He has been at this business of understanding the complexities of construction, of the construction industry and its labor management methods for a long, long time. In his statement to us yesterday he said in 1969, as the need to improve the industry's collective bargaining performance became apparent, at the request of Secretary Schultz, I began discussions with labor and management in the industry concerning the growing number of work stoppages and of the bargaining problems. On September 22, 1968, by Executive Order, the President established the Construction Industry Collective Bargaining Commission to study the complex bargaining structure, to seek solutions to manpower problems, and to develop voluntary tripartite procedures in settling disputes.

That was 6 years ago.

The President asked Mr. Dunlop to again come to Washington from Harvard to put him into a position where he was acknowledged, is acknowledged, and I am sure you would acknowledge is a national authority in understanding labor-management situations in the construction industry.

Mr. Thompson. If it please the chairman, I should preface what I am about to say with this statement.

I have the highest regard for Secretary Dunlop. I do not deny his credentials in terms of his background, experience and knowledge, not only of the construction industry but many other things. There are many other people in the United States who also have knowledge on this subject.

I think I know something about it from having practiced law almost 25 years in the labor field and in the construction industry. But I do not necessarily profess to know as much as Professor Dunlop does, but I think there are people, many people in this country who should be heard from.

I think there are people on both sides of this issue would like to be heard from if a time had been allowed within the time the bill was introduced until the hearings were scheduled, and if the thing could be considered in a more thorough fashion.

I think you would find that there is a vast source of information and experience which is not being tapped because of the speed with which this thing is being dealt.

The Chairman. Could I parenthetically add there that you say we are railroading this bill. I gather you mean we are moving with unaccepted speed.

You have got to find a new word other than railroading. The railroads that we have the opportunity to use up here in the Northeast, believe me, they are not moving at an unaccepted speed.

Mr. Thompson. I think we have a problem of regional concept.

In our part of the country, we still have some pretty good railroads.

The Chairman. Missile speed. You should say we are moving with missile speed.

Mr. THOMPSON. I will accept your amendment to my testimony because I think it is more like missile speed.

I think, as you examine the procedures that are being followed, aside from the specifics of the legislation, the only thing that I know that has passed through this Congress any faster than this at this point, at least, was the Declaration of War, and I do not know of any justification for it because these problems, as I stated in my testimony, these problems were here before we were even born.

The CHAIRMAN. Well, I appreciate your expression of attitude. But I recall the last time I heard this on a bill that I happened to be in a position of leadership on, it was the Workers' Compensation Act that we had hearings on a couple of years ago, and I heard exactly this, that we were railroading, we were moving, we are not hearing everybody. Why the speed?

You know where that bill is now? It is still before us.

The fact that we had the Secretary develop this bill and this was the legislative expressions of a significant part of his lifetime, thinking through the problems of the fragmented industry in terms of its labor-management situation, the fact that we began hearings soon after it was introduced is not to be condemned, I do not think.

Mr. THOMPSON. I do not condemn anyone for anything, because I do not think I am in an appropriate position to do so.

I would say, though, Senator, and I am certain you would agree, that honest people can disagree over even such things as what ought to be done about collective bargaining in the construction industry, and I just happen to be in sharp disagreement.

The CHAIRMAN. This, I fully respect. But this characterization of the railroad and that the people are not being heard—I tell you we have representative opinion in these hearings, as I think we can—we do not get the breadth of testimony on a viewpoint, but we are sure getting all of the viewpoints, believe me.

Mr. THOMPSON. We tried to throw in as much as we could because this may be our last chance and the train goes by.

I think we ought not to let the moment go by without raising this awful specter of this "common situs picketing" situation, because this bill has been paraded, not by you, and I realize that, but it has been paraded in the press and some of the comments by some people as being a companion bill to the "common situs picketing" bill which is necessary to get the President to sign the "common situs picketing" bill. I do not think any of us can avoid that as being a proposition that is floating around, let us say.

The CHAIRMAN. I will say you are quite accurate, the President viewed the legislation as a comprehensive approach to the construction industry, and he put them together, I know. We are still, both Houses of Congress, considering them and they are both being considered at the same time. I can see how you might link them.

Now, just before I turn to Senator Randolph, just to go back to all of the foundations that were laid for this bill, or some of them, not all of them, I mentioned the Construction Industry Collective Bargaining Commission of 1969, and Secretary Dunlop was Chairman of that Commission. Building on the work of the Commission, on March 29, 1971, the President established the Construction Industry

Stabilization Committee. This was done by Executive Order, but it was under the authority of the Economic Stabilization Act of 1970.

And just to the bottom line, out of that activity, and again it was a tripartite committee, Government, labor, industry, they were successful in seeing this result.

In 1972–73, first-year increases in new collective bargaining agreements averaged less than 6 percent. This followed on a period when there were increases prior to the establishment of this Commission study and Stabilization Committee greatly in excess of that.

And because you have been familiar with this in your practice, you recall that period prior to, when there were significant increases beyond 6 percent.

Mr. THOMPSON. I hope you will give me an opportunity to touch on that subject.

The CHAIRMAN. Sure.

Mr. THOMPSON. I think, really, it casts some light on some basic philosophies that underlie this bill and some with which I sharply disagree.

Without necessarily arguing with the percentages of increases during the wage control program versus the prior period and the subsequent period, I think there is argument on some of those statistics.

Yes, I will grant you that there were excessive wage increases before and there have been excessive wage increases since. And if you go that route of saying the only time we have control, it is when we have had a wage control program, then you pick up on just the point that I closed on in my testimony, that is that the authors of this legislation, the people who thought it through and presented the program, are saying that there must be some form of governmental control in order to contain excessive wage settlements in the construction industry.

That is knocking the props out from under free collective bargaining.

If we are saying free collective bargaining will not work in the construction industry, and that is what you are saying when you cite wage control program as the only time it has been proper, it is contrary to all the basic labor laws of this country.

The CHAIRMAN. This was the foundation, this grouping of Dunlop's under the Commission created by the President, was announced, of course, on the Stabilization Act of 1970, and we do not have that now.

Now, does that mean because we do not have the Stabilization Act in effect now, we should not be trying to do something to rationalize and improve collective bargaining in construction or should we just throw up our hands or just let things go as they are?

You say we should not do this through this bill. You are saying let us continue as we are. Quite frankly, it seems to me that the Nation is more than impatient with status quo in this industry.

Mr. THOMPSON. I would say this, that I think the increases that we have seen in the last 2 or 3 years or so have been perhaps exaggerated because of that wage control program. And I think every economist in the United States, except Dr. Dunlop, would agree with that.

As I read his testimony before the House, he thinks we should still have a control program. That is what I think is an underlying defect in this proposal.

I do not say something should not be done about collective bargaining in the construction industry. Obviously, something should be done. But I am not sure legislation is the answer.

I have no sympathy or patience with people who come running to Congress every time they have got a problem in their industry and want a law passed to correct their problem. I think they ought to be required to face up to their problem and at least attempt to solve it themselves.

They will quickly tell you that it is easy for me to say that, because it is not my neck that is about to be chopped.

But some of my clients are involved, and they are suffering through this period.

But to launch a new program, to inject a new concept into the Federal laws of collective bargaining, just to solve the problem in some portions of the construction industry, seems to me is going too far. This is the reason that we basically opposed this legislation.

We think that the existing laws, if properly utilized, would go a long way toward helping to solve this problem. We think this problem is moving toward coming under control by virtue of the natural forces in the economy. But it has not quite gotten there yet.

Of course, I am one of those antiquated people who thinks that the wage control program was unnecessary. I think the natural forces in the economy were about to take over there, and I think Secretary Schultz, Dr. Dunlop's predecessor, once removed, agreed with that.

But, nevertheless, I think what you are being asked to do here by a portion of the construction industry, and I would like to emphasize portion because I do not think that you can say that the unionized contractors and trade unions make up the construction industry—there are other people in it—a portion of the industry is asking the Congress to solve their problem.

And if there is any question about they consider it being their problem, I think you simply have to look at press releases where Dr. Dunlop said open shop contractors have not got anything to do with this. It is none of their business.

The U.S. Chamber asked permission to sit down and talk with Dr. Dunlop when this program was being formulated, when all of these discussions were going on that you refer to, and we were told it was none of our business, that there was a question of collective bargaining in the construction industry.

We just happen to represent most of the customers of the industry. We happen to represent a good portion of the people that are in the industry itself, and yet we were not even allowed to be heard when the program was being formulated.

You cannot say on the one hand that this is a problem that is a private problem between union contractors and unions, and it is a problem that needs national legislation.

The Chairman. I will say that this bill is not going to solve any major problems, but I think it is a civilized approach to bringing under law the opportunity for people to come together and try to solve their own problem.

Mr. THOMPSON. We have got it under law now. That is what the Federal Mediation Service——

The CHAIRMAN. It has been stated that National Labor Relations Board can do certain things to further rationalize the bargaining process. It is not happening. Quite frankly, we are going to get a paper from a prior witness on just how it is felt that the National Labor Relations Board can get us out of the present difficult situations we find in construction. We will look at it, of course.

Whatever the situation in law with respect to the Board on this question, it is obviously not very effective and not being used.

There is no guarantee that this will be fully effective either.

Quite frankly, it seems to us and comes to us from the Secretary that this is worth an effort to get the parties, those naturally concerned in collective bargaining, and that is what we are talking about here, collective bargaining. And they are the parties to all of this. Put them in a framework of discussion so that we will have less of the leap frogging and whipsawing that we have had in the past and the inflationary pressures that it has produced.

Mr. THOMPSON. The National Labor Relations Board, which I think we all recognize does not initiate actions on its own, you have to go into it and file papers and ask for it to move, and that is the basic feeling there, has not been asked to participate fully in a solution to this problem.

The CHAIRMAN. That is why it is not effective.

Mr. THOMPSON. But there is no reason why these bodies that come in here with this terrible problem could not go to them and ask for some help.

Also, if you talk about bringing parties together to solve problems, and it sounds so wonderful, I am almost lulled into support, not quite—well, you have got the Mediation Service which is set up for that purpose and, overall, has functioned very well, I think, through the years.

The CHAIRMAN. And with wisdom, this bill includes the Mediation Service through its chairman as an ex officio member of the committee——

Mr. THOMPSON. In every other respect, at least by implication, it excludes Mediation Service and supplants it with a whole new process, whole group of new people that are going to invent the wheel again.

That is one of my basic objections to some of these new programs that are being proposed in the labor field.

We always seem to start from scratch. We never seem to take advantage of the programs and the experience that exists. Sure we can go off and abstractly study a problem and come up with an abstrtact solution which I consider this to be. It would be wonderful if we were just teaching school up at Harvard, but we are out there in the real world fighting for our lives. And to throw a program at us like this that may work, may not, and may be used to cut our throats and do it with a missile speed, we think is rather unreasonable.

I would like to make two other points if I may, sir.

The CHAIRMAN. How does that expression go, you prefer the Devil, you know?

Mr. THOMPSON. Correct. I think that is a very good expression. Two other points I would like to touch on. That is this.

The concept of removing the bargaining from the local level, national level, or causing national organizations to become involved, of course, as it turns out, the bill is sort of one-sided. It is talking about getting national unions involved.

It seems to imply to me that we do not really believe in democracy in the trade union movement, that the local people who are closer to the constituency in the unions, either will not or do not exercise restraint, I would assume because of the pressures of constituency, and therefore we are going to turn it over to national leaders who are less susceptible to the pressures.

That to me is direct challenge to democracy which I strongly disagree with.

The other concept that we feel is built into this and which is just almost a followup to it is that when this program does not work toward the high sounding goals, I do not think there is any question but that the next step is going to be another recommendation that we put some teeth into it and allow this committee to order the parties to enter into these agreements. And then you destroy free collective bargaining.

There is no reason why you should not move right into transportation and public utilties and all other industries where there are problems in collective bargaining.

The bill simply does not acknowledge free collective bargaining as a valid concept, and it even questions democracy which shocks us, but I think you have to pull the cover off and there it is.

The CHAIRMAN. I am sorry you did not have a chance to sit down with the Secretary.

Mr. THOMPSON. Again my comments are certainly not personal to him. I think he is a great public servant. But I have no question as to his intentions or his beliefs in this regard.

I just simply disagree with him very sharply.

And the association that I represent disagrees with him.

The CHAIRMAN. He is a most profound disciple of collective bargaining, that I know, and I think that he could be useful to you in understanding his attitude.

If there is anything he is not to be a party to or anything to weaken the institution——

Mr. THOMPSON. You mean he is one of the few enlightened Republicans around?

The CHAIRMAN. He is a man that stands above party. Every President back to Roosevelt has drawn on his wisdom. Am I right? He came in the late thirties. And every President has drawn on him. He came in, as I said, at the request of President Nixon. But I must say I have been conducting a little bit of a filibuster with you, Mr. Thompson, and I appreciate it. But I was doing it for many reasons, and one was I wanted to make sure you did not get away before Senator Randolph had an opportunity to speak.

Mr. THOMPSON. Senator Randolph, if you would indulge me for a moment, I cannot let the temptation pass, in reference to the fact that the Secretary of Labor has been advising for these many years on both sides of the aisle to suggest that perhaps you should listen to some other sources as well, we would not be where we are now, and maybe we would not be worse off in the future.

But I simply could not pass that temptation to please listen to some of the others of us who have been around and have not had the benefit of an audience with the President and some other high leaders.

The CHAIRMAN. Thank you, Mr. Thompson.

Senator Randolph.

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

You mentioned Secretary Dunlop and his long service at times for the Federal Government and at other times for the State government in New York and presumably as consultant and as executive or official in private life and in other levels of government.

But when you start stepping back to F.D.R., well, I was there with him. I remember, of course, Mr. Thompson, when we initiated the Fair Labor Standards Act. It was brought to passage in 1938.

Do not misunderstand me. I believe that often our differences can be our strengths, and from discussion and debate, we can arrive at a consensus, at least in part, which sometimes gives us a base on which to work.

But I must tell you if you study the record, you will find that the very organization you represent today—I note here it is the National Chamber, is that not the United States Chamber?

Mr. THOMPSON. It is the Chamber of Commerce of the United States.

Senator RANDOLPH. Really, this is a name that is not correct as the record shows it.

Mr. THOMPSON. It is not the official name of the organization. It is a name which is commonly used in reference to the Chamber.

Senator RANDOLPH. But you could not practice and win a law case except on the exactness of the case, is that not right?

Mr. THOMPSON. I suppose that is right.

Senator RANDOLPH. I remember that the spokesman for the U.S. Chamber of Commerce was there testifying against the Fair Labor Standards Act in 1938.

Now, I am only saying that we do know that the Fair Labor Standards Act, in my opinion, has been a worthwhile part of the body of law of the United States since that time. We were trying then, Mr. Thompson, to guarantee a wage of 25 cents an hour for those persons whose wages fell within the definition of interstate commerce. That was one part of the bill.

The other was the number of maximum hours in the empoyment of persons in interstate commerce. I did not mean to step back, except when you mentioned some of the situtions, it renewed my memory of the concerns then, for and against, that measure, just as there are concerns for and against all the measures that come before us.

I would say to you that I do not believe in trading off one bill for another, and I will not be a party to it. I will not speak for our able chairman. I am sure he can speak for himself. But each and every piece of legislation considered by the subcommittee and the full committee, I would hope, stands or falls on its own provisions, whatever they may be at the outset of the introduction of the bill, or in its markup to its final conclusion. That would be my position.

I would not even think of one piece of legislation and placing it alongside, either complementing it or competing with it for my con-

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sideration and eventual determination. You would understand that, coming from me.

Mr. THOMPSON. Yes.

Senator RANDOLPH. I hope you would believe me.

Mr. THOMPSON. I certainly do.

Senator RANDOLPH. Sometimes it is difficult to have a Senator believed. You understand that.

Mr. THOMPSON. I do.

Senator RANDOLPH. I want you to know that that is the strong feeling that I have. The only reason I mentioned it is not to argue the point of the legislation, but to indicate that in your formal statement, on page 2, you did refer to this possibility. But I liked the fact that you had a carefully drawn sentence.

You said, "If, in fact, this bill"—you did not say what has been rumored or discussed is a fact, you said, "If, in fact," and I like that. You qualified what you were saying.

Mr. THOMPSON. Thank you, sir.

Senator RANDOLPH. Then, on page 11, in the concluding paragraph of your statement, you said, "If the true purpose behind this bill is to obtain passage of the 'Common Situs Picketing' bill, then it should be rejected forthwith."

"If the true purpose behind this bill," and there again you were asking a question and you were not making a statement, although you get a little nearer to the realm of stating something than to say it was a rumor. You are coming a little nearer, but still you are protecting your statement.

Then you were indicating that if arrangements were made, so forth and so on, that, of course, you would oppose that.

Now, I note here that apparently, although when I came into the hearing unavoidably late, you were discussing railroading——

Mr. THOMPSON. We changed that to the missiles.

The CHAIRMAN. Missile speed.

Senator RANDOLPH. Then you have got the steamroller. That is in the last sentence of your statement. And, of course, although I am in favor of all locomotives being fueled with West Virginia coal—you understand that——

Mr. THOMPSON. I understand that.

Senator RANDOLPH. But most of them these days are electric, of course, as you well know.

So whether it is one form of moving too quickly or another form, that is not too important to me, except to tell you that I will resist, insofar as I have, well, the right and responsibility to resist, any so-called attempt not to be exhaustive in the viewpoint of people to be heard on a subject of this kind. I, of course, do not direct, naturally, the chairman and the staff working with him as to the witnesses to be called, but I have the feeling that our chairman, Senator Williams, does what I do in the Public Works Committee, and when there is a bill before us, we hear all the viewpoints, we take it from all sides, and if there is a subject on which the Friends of the Earth, for example, take one position, which is let us say, a polarized position, let us just say that for a moment, and on the other side there might be the Associated General Contractors of America, with their polarized thinking on

a certain bill, which could happen, we must attempt to be responsive to the requests from people who come like you, Mr. Thompson, to express not for yourself alone or the law firm, of course, of which you are a partner, but you come in this larger sense representing the membership of the U.S. Chamber of Commerce.

Mr. THOMPSON. I might add, Senator, at no remuneration. I am not here as a lawyer for the U.S. Chamber. I am here as chairman of the Labor Relations Committee of the Chamber and as a spokesman for it at no remuneration.

Senator RANDOLPH. I so understand, because I know the modus operandi of the Chamber in reference to its committee structure. You are the Chairman.

Mr. THOMPSON. Yes.

Senator RANDOLPH. You are not an attorney for it.

Mr. THOMPSON. That is right.

Senator RANDOLPH. Or spokesman within the Washington office or State office, we will say.

Mr. THOMPSON. That is right.

Senator RANDOLPH. Now, you speak about volunteers and I am a tremendous believer in this. I take the occasion, and the chairman, I am sure, would feel that perhaps it would be not my place to discuss this, but there is an effort being made now in the United States of America that no person do a job except a job for which he or she is paid.

Did you know that?

Mr. THOMPSON. I do not believe so.

Senator RANDOLPH. I am telling you there is an organization that has that as one of its planks. Frankly, I have been talking with the organization because there are good parts to the organization, and I hope they would not shatter—it is the NOW organization, National Organization of Women.

The CHAIRMAN. It is National Organization for Women. It is not "of" but "for."

They have got men members.

Senator RANDOLPH. National Organization for Women.

The CHAIRMAN. And do not call a women a lady or you will get in trouble, I discovered.

Senator RANDOLPH. I know many ladies who have no difficulty in having me call them ladies.

The CHAIRMAN. I love those. But there are those that take great offense. And do not open a door for a woman. To a lady; yes.

We are learning a lot of new things in this business. I will tell you.

Senator RANDOLPH. I do not approve of all the new learning. If you want to get me alongside Mr. Thompson here——

The CHAIRMAN. I am with you, Jennings.

Senator RANDOLPH. I am thankful for ladies and gentlemen.

The CHAIRMAN. Over there is the staff, some of our staff over there, and I will tell you they are all beautiful ladies. That is out of whack altogether with NOW to say three beautiful ladies are over there.

Mr. THOMPSON. On that we will agree.

The CHAIRMAN. Did I interrupt your continuity, Jennings?

You mentioned NOW.

Senator RANDOLPH. Yes; I did. I was simply drawing attention to the fact that, very frankly, I think there are real parts of this program which is worthwhile.

The CHAIRMAN. Equal pay for equal work. We created that in this committee.

Senator RANDOLPH. Certainly. I suggest to them over and over again, at the State level and at certain locations in West Virginia, that they think that one through because the heart of America, Mr. Thompson and Mr. Chairman and everyone in this room, is the volunteer effort of the people of the United States, whether it is a volunteer fire department at a little town of Valley Head, 25 miles south of my hometown of Elkins, where 21 persons, including the chief himself, are volunteers who work for not one penny, Mr. Thompson—you speak of no wages to you—and with their firefighting equipment, with their two ambulances serving an area of three mountainous counties, every hour is a volunteer hour. I can multiply that for thousands of different volunteer efforts that are made and it is the heart of America.

And I do not know why I really got off on this——

The CHAIRMAN. I appreciate it.

Senator RANDOLPH. Sometimes we wander afar. But, in wandering afar——

The CHAIRMAN. If anybody thinks we are railroading now——

Senator RANDOLPH. I hope we are talking about the basics of this country and about the people who, by and large, believe in them.

To come back to what I was saying, for the moment I will be considering this legislation very carefully, as you understand I will, because I told you so. I want you to believe, and so there is no railroading, there is no steamroller tactics, there is only, I am sure, the effort to hear the witnesses, to consider their testimony, and in the so-called consideration and markups within the subcommittee and in the full committee, that we give careful attention to the issues before us.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. THOMPSON. Senator Randolph, this is a major concern of ours. I certainly accept what you have said and am most pleased and would like to express the gratification of the U.S. Chamber for the good view, and these words were carefully chosen, as you pointed out, and we have very high regard for the U.S. Senate and the Congress, and we felt that there, No. 1, was the appearance of a steamroller or missile, that we are aware this was discussed before you came in, that it is being talked around openly, that this bill and common situs bill are companion bills, and that the reason this one is being given priority treatment, which it seems to have been given up to now, was to let this bill and the common situs picketing bill arrive at the President's desk on the same day, or relatively at the same time, with the understanding it is the only way he would sign the common situs picketing.

I do not think anybody who reads the papers would be unaware of that.

All we have asked is that this bill be carefully considered and that it not be rushed through just to meet some artificial requirements that seem to us to be, first, unnecessary and, second, unwise, because this

bill itself aside from common situs picketing which we have already expressed our very strong views against, this bill itself would launch an entirely new Government program in the labor field. It is so broad in its terminology and so many uncertainties in it as to what could be done with the power granted—you are talking about granting legal power to private citizens when you enact bills like this, that it ought to be considered in the light of how can we protect against the abuse of that power.

How can we define what we really mean so that people do not misuse what we are trying to give them but accomplish purposes that we did intend to accomplish.

All of those things are a part of the legislative process. I do not have to tell you that, because you have been at it a lot longer than I have been around.

I think that is the appearance that concerns us. That is the reason we raised them the way we did. We certainly have tried, and I hope we have constructively pointed out some of those areas which should be looked at and which should be tightened up if you are going to enact legislation of this kind. We think it is unnecessary.

We think it will go to undermine free collective bargaining, and if you do it in the construction industry, there is no reason why it cannot get into the mining industry as well at some point.

For that reason, we think this thing ought to be dealt with carefully and ought to be dealt with in due course and not just to meet somebody's artificial deadline to get it on the President's desk when something else gets there.

Senator RANDOLPH. I understand, and I am listening very carefully to what you said. As the chairman knows, perhaps I have told it before, in the mountains of West Virginia, there was the son who apparently had no close rapport with his father, and the father became upset, and he said, in the language of the hills, although they know English, "Son, are you a listenin'?"

He said, "Yes, pappy, but I ain't payin' no attention."

I want you to know that I am listening to you, and I am paying attention to what you say. We deduce and we fit together the pieces and we try to do, hopefully, a realistic job in reference to legislation.

I am glad that I could have been here for this session, at least in part.

Mr. Chairman, I know you understand the problems of moving from one committee to another. The fact is that I was talking and listening earlier today to 125 coal miners from West Virginia who came to discuss legislation that they desire to have as a possible amendment to the Black Lung legislation which came from this committee originally.

But the collective-bargaining process is involved and complex, and it breaks down so very often. Certainly, in our coal mine strike, it was shattered, it was broken. The UMWA had a contract with the operators. The very miners who belong to the union were in violation of the contract of the union of which they were members. Then they were in violation of a court order. Not everyone, of course. Do not misunderstand me.

When a strike of that kind comes—and I am not going to discuss the strike at this time because it not part of our consideration—but, Mr. Thompson, taking the State of West Virginia alone, our State was the

loser by more than $2 million in taxes that would have been paid on the coal tonnages that would have been mined and marketed.

So the ramifications go beyond, as the chairman knows, the individual worker and the actions that he and his fellows take in all of these matters. They fan out in a wide scope and have a tremendous depth of interest and effect which sometimes people do not realize.

Thank you very much.

Mr. THOMPSON. Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Thompson, and your associates.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Our next witness will be Mr. William E. Besl, Crane and Rigging Association.

Mr. Besl, I wonder if we could just pause to give me time enough to make a phone call.

[Short recess.]

The CHAIRMAN. Please proceed, Mr. Besl.

STATEMENT OF WILLIAM E. BESL, PRESIDENT, CRANE & RIGGING ASSOCIATION OF THE HEAVY SPECIALIZED CARRIERS CONFERENCE; ACCOMPANIED BY E. G. JOHNSON, DIRECTOR, CRANE AND RIGGING ASSOCIATION

Mr. BESL. Mr. Chairman, my name is William E. Besl, president of Fenton Rigging Co. of Cincinnati, Ohio, and current president of the Heavy Specialized Carriers Conference, a conference here in Washington. I am also the current president of the Allied Construction Industries of Cincinnati, an association of some 300 local contractors, both engaged in subcontracting and general contracting work.

With me is E. G. Johnson, director of the Crane and Rigging Association from here in Washington.

The Crane and 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 and 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 building, powerplants and oil refineries. They transport, place and install nuclear reactor vessels, bridge beams, and other heavy construction materials and equipment. Whenever there is something big or heavy to be lifted, moved or placed, you will find our members on the job.

As a contractor with multiple collective bargaining agreements and one who has experienced much frustration because of the basic structure in which the process of collective bargaining takes place, I heartily agree with the Secretary of Labor when he says that the legal

framework of collective bargaining in the construction industry is in need of serious review and that it is timely for labor and management to explore a more viable and practical legal framework for collective bargaining. The chaotic conditions that exist and the many problems one encounters when trying to reach a fair and equitable agreement demand that something be done.

There are just too many agreements between too many employer associations and local labor organizations to not have a better system in which the bargaining takes place. To say that bargaining in the construction industry is fragmented is an understatement at the very least.

We feel that the Construction Industry Collective Bargaining Act of 1975 is a step in the right direction in bringing about some order in our industry. However, we also feel very strongly that there should be clearer language in the bill spelling out more precisely the role of the proposed Construction Industry Collective Bargaining Committee and the responsibilities and obligations of labor and management at both the local and national levels.

It is our opinion that for the collective bargaining process to be truly reformed and helpful to the entire construction industry, the proposed legislation needs to be strengthened and the language made more specific. To that end we offer the following suggestions:

1. In the event the committee takes jurisdiction of a collective bargaining situation and subsequently the committee reaches a decision, there shall be no strike or lockout permitted. In other words, the decision of the committee reached after receiving assistance and guidance from a national craft board or branch boards or other appropriate organizations composed of representatives of labor and management, should be binding on the local construction labor organization and employer or employer associations.

2. There should be a common expiration date for all collective bargaining agreements. We believe such a requirement would go a long way towards bringing stabilization to the industry. We suggest that all agreements expire on April 30.

3. There should be no retroactive agreements permitted for wages, fringe benefits, or other monetary provisions after an agreement is reached. Presently, some unions will not bargain seriously until a trend is established and they can determine a pattern of settlements being made in other negotiations in the area. It is our opinion that if retroactive payments were prohibited, both parties could get down to serious negotiations more rapidly.

4. Only those members of a labor organization actively employed by the employers involved should be permitted to vote when a collective bargaining agreement requires ratification. Past experience shows that many local union members belonging to the same local, but who are not working for the employer involved, will vote against an agreement that has been worked out in good faith by negotiating committees because they have everything to gain and nothing to lose. They may receive a higher increase under a different agreement, and because they are not working for the employer involved, their own economic position will certainly not be harmed.

5. When the committee votes on the acceptance or rejection of a proposed collective bargaining agreement, we believe that an established quorum should be required that specifies that there shall be an equal number of management and labor representatives and at least one neutral member representing the public interest present or authorized to cast ballots.

6. The proposed legislation authorizes the committee to promote and assist in the formation of voluntary national craft or branch boards. We recommend that every craft should have a craft board, either the one presently in existence or a new one should be created. In most instances, the craft dispute boards have been of great value to the construction industry and we feel they will be of even greater importance in the future.

We also suggest, from past experience, that the committee should study the way the craft boards have been funded, because, in many cases, the smaller contractor associations are not afforded the opportunity to adequately participate.

In this same vein, we thank you, Mr. Chairman, and members of the Labor Subcommittee for the opportunity for our relatively small association which represents small and medium-sized contractors, to testify before you to present our comments and suggestions. Consideration of such important legislation should take into account the plight of the small and medium-sized contractors who are literally fighting for survival at a time when we are faced with high labor and materials costs in a depressed construction market.

Certainly, big business and big labor have their voices heard, but the small and medium-sized businesses which are the backbone of America must also be heard.

Likewise, we sincerely hope that when the Construction Industry Collective Bargaining Committee is being formed, serious consideration will be given to seeing that the small contractor associations are adequately represented.

I do want to point out that we consider the Construction Industry Collective Bargaining Act of 1975 to be separate and distinct from any legislation having to do with common situs picketing. We strongly believe that these are two entirely separate pieces of legislation and should be treated accordingly.

We have previously submitted a statement to this committee stating our objections to the common situs picketing legislation and we have, in no way, changed that position. We do not consider the reform of collective bargaining to be any form of trade-off for common situs picketing.

In our opinion, any bills that could have such impact on the construction industy and the entire American economy as common situs picketing and collective bargaining legislation, should be debated and voted on separately.

We believe that the Construction Industry Collective Bargaining Act of 1975 is a move in the right direction to help clean up some of the serious problems in the collective bargaining process.

We hope that you will consider the suggestions and proposals we have offered on behalf of our association.

I will be happy to answer any questions you or members of the committee may have.

The CHAIRMAN. It is a very fine statement, Mr. Besl, and very useful to the committee. We appreciate your observations and suggestions for us.

I would like to pursue some of them further, but I just got word that an amendment is now being debated over on the floor of the Senate dealing with the subject matter of this committee. So I have been called over there.

If there should be any questions that we feel most important to ask you, I wonder if we could write to you.

Mr. BESL. I would be glad to, or I would be glad to appear and come back to see you at any time.

I would like to make this final statement.

Due to the brief amount of time that we have had to study the proposed legislation, we request permission to submit additional written comments for the committee to consider.

These comments will be available no later than tomorrow.

The CHAIRMAN. Excellent. Thank you.

[The material referred to and subsequently supplied for the record follows:]

59-964 O - 75 - 10

STATEMENT

of the

CRANE & RIGGING ASSOCIATION

on

THE CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

to the

SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

SEPTEMBER 17, 1975

Mr. Chairman, we are pleased to submit for your consideration additional comments on our testimony of September 17, 1975, on the Construction Industry Collective Bargaining Act of 1975.

1. We are concerned that the proposed legislation does not address itself to three major problems that adversely affect the ability of the local bargaining association to negotiate fair and equitable agreements with the local unions.

a. Interim agreements whereby a contractor agrees to pay wages and benefits retroactively and thereby is permitted to continue working although the local union is officially on strike. Also, there are occasions when a contractor will agree to the local unions initial contract demands before negotiations even begin. These demands are usually considerably higher than the final settlement reached.

b. National agreements which are normally signed with the international unions by the large contractors who operate on a national basis. These contractors do not enter into local

bargaining agreements, but they agree to pay wages and benefits retroactively. Therefore, they continue to work even though the craft is officially on strike.

c. The ability of members of a local union who are on strike to go into other areas where employment is available.

These three factors make it difficult to reach a fair and equitable settlement prior to contract termination and after a strike has started. If through the above means a significant number of union members will be working during a strike and in some cases receiving higher wages than what will be the final settlement, there is no compulsion on these members to vote for settlement. The same is true after a strike starts. These three factors contribute significantly to the weakness of the contractor position at the bargaining table.

As possible solutions to items "a" and "b" we suggest the legislation incorporate provisions whereby if a local association represented members that employed a majority of the union membership, it would be the certified agent for all employers party to the agreement being re-negotiated. The intent being to make illegal, interim agreements and those provisions of national agreements, that permit contractors to work when the union is on strike against the association. Wherein item "c" is concerned, we suggest a provision that would NOT make it an unfair labor practice for a contractor to refuse to hire or terminate an employee who is on strike in another area.

2. We are also concerned that the proposed legislation does not have an adequate "checks and balances" system to prevent an abuse of power by the international labor organizations in approving or rejecting local collective bargaining agreements. Such power was taken away from the Internationals several years ago because it was being

abused. Under the proposed Act, an international union could reject an agreement that did not include its "pet" projects or objectives. This places the local contractors association in the position of having to negotiate provisions that are satisfactory to both the local union and the international union, but without having any direct negotiations with the International.

We believe that the agreement should be approved by a craft or branch board which is comprised of both labor and management representatives or by the Construction Industry Collective Bargaining Committee. If only the international union has to approve the agreement, the Association will not have a forum in which to present its position. We see this as opening the door for negotiations of all kinds of jurisdictional provisions in local collective bargaining agreements.

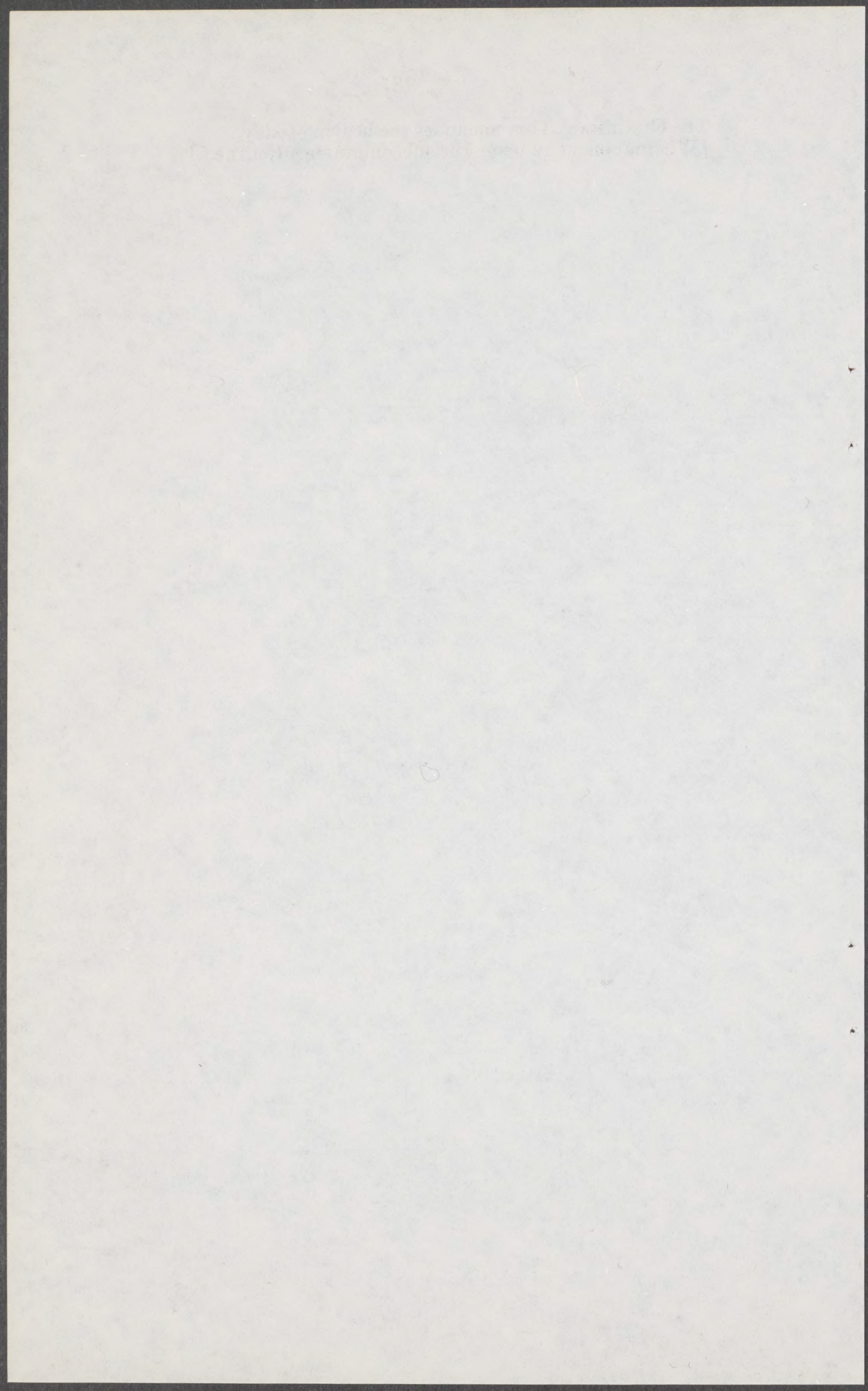
3. We suggest that in order to keep bargaining on the local level as much as possible, that there be established certain parameters or guidelines having to do with wages and other monetary provisions. If the agreement reached is within these parameters it would not be necessary for the Committee to take jurisdiction or even approve the agreement. A similar procedure was followed during the period of time when agreements were supervised by the Construction Industry Stabilization Committee.

Thank you for considering these additional comments on the Construction Industry Collective Bargaining Act of 1975. We will be happy to answer any questions you may have or to meet with you at your convenience to further discuss our suggestions.

EGJ:tb

The CHAIRMAN. This concludes the hearing today.

[Whereupon, at 12 noon, the subcommittee adjourned.]



APPENDIX

ADDITIONAL STATEMENTS AND OTHER PERTINENT MATERIAL SUBSEQUENTLY SUPPLIED FOR THE RECORD

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

EXECUTIVE COUNCIL

GEORGE MEANY
PRESIDENT

LANE KIRKLAND
SECRETARY-TREASURER

JOSEPH D. KEENAN
PAUL HALL
PAUL JENNINGS
A. F. GROSPIRON
PETER BOMMARITO
FREDERICK O'NEAL
JERRY WURF
JAMES T. HOUSEWRIGHT
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C. L. DELLUMS

RICHARD F. WALSH
I. W. ABEL
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MATTHEW GUINAN
PETER FOSCO
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S. FRANK RAFTERY
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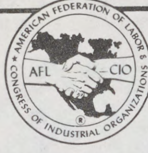
AL H. CHESSER
MURRAY H. FINLEY
SOL STETIN
GLENN E. WATTS



815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

(202) 637-5000

September 11, 1975

Honorable Harrison A. Williams, Chairman
Subcommittee on Labor
Senate Labor and Public Welfare Committee
Washington, D. C.

Dear Mr. Chairman:

The AFL-CIO supports enactment of S. 2305, the Construction Industry Collective Bargaining Act of 1975.

The Federation has carefully reviewed the bill and the statements on the bill before the Committee of John T. Dunlop, Secretary of Labor, and Robert A. Georgine, President of the Building and Construction Trades Department, AFL-CIO. On the basis of our study we agree with the Building Trades Department that S. 2305 is a carefully conceived response to the particular needs of the construction industry and that the bill constitutes a worthwhile experiment, of limited duration, for strengthening the structure of free collective bargaining in that industry.

It is therefore our judgment that S. 2305 merits prompt and favorable consideration by your Subcommittee and by the Senate.

Sincerely yours,

Andrew J. Biemiller

Andrew J. Biemiller, Director
DEPARTMENT OF LEGISLATION

SENATOR
WILLIAMS (N.J.)
Sep 15 4 00 PM '75

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
RECEIVED
SEP 16 1975

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

STATEMENT OF

THE NATIONAL ASSOCIATION OF HOME BUILDERS

Submitted To The

SUBCOMMITTEE ON LABOR

of the

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

on

PROPOSED

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

SEPTEMBER 16, 1975

Our membership consists of both union and nonunion builders, of both prime contractors and subcontractors, with unionized housing construction mainly concentrated in major metropolitan areas. Union wage levels in an area, however, also have an impact on the wages paid to nonunion employees. This is especially true for federally assisted multifamily construction because of the requirements of the Davis-Bacon Act. We, therefore, have a great interest in legislation aimed at improving the framework of collective bargaining in construction.

NAHB endorses establishment of the proposed Construction Industry Collective Bargaining Committee to assure that problems of collective bargaining structure, productivity and manpower development are constructively approached by labor and management in the construction industry. It would be the beginning of a mechanism that the unionized sector of the construction industry has needed for a long time. The construction industry, unlike other major industries, consists of a multitude of relatively small employers dealing with many large unions. This has resulted in an imbalance of bargaining power in favor of the union.

This imbalance has frequently resulted in excessive wage and fringe benefit settlements, with different unions in the same geographic area competing with each other to see which can achieve the highest settlement for its members. As a result, in the late 1960's and early 1970's, settlements in the construction industry frequently resulted in annual increases of from 10 to 20 per cent. This led to the establishment in

March, 1971, of the Construction Industry Stabilization Committee, as a reaction to such highly inflationary settlements.

CISC, which was made up of management, labor and public members, restored stability to the collective bargaining process in the construction industry, resulting in a decrease in the annual increase in wage rates and fringe benefits over the preceding year from 13.5 per cent in the first quarter of 1971, to 5.6 per cent in the first quarter of 1974. It also resulted in a decrease in work stoppages in the construction industry from 501 in 1970 to 272 in 1973. Unfortunately, the authority of CISC terminated with the termination of the Economic Stabilization Act on April 30, 1974. Since that time, the annual increase accelerated to 9.6 per cent in the first quarter of 1975 and the trend is for further increases. Additionally, work stoppages increased to 437 in 1974 and are at an annual level of 400 in 1975. Attached are two charts illustrating these changes.

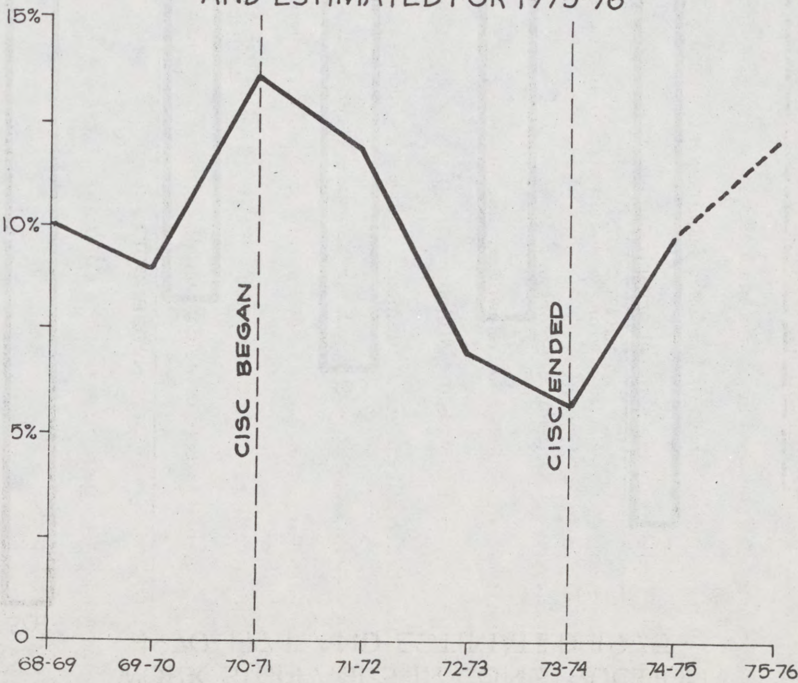
We feel very strongly that the expiration of CISC brought about the renewed instability in the construction industry that has occurred over the past 16 months. Because of CISC's authority to intervene in collective bargaining disputes, it was most successful in helping to resolve these disputes and moderating the inflationary trends that were evident before its institution. The problems which CISC was able to deal with have not gone away and this is why we believe that the proposed Construction Industry Collective Bargaining Act is an important step towards dealing with these problems on a permanent basis.

By involving the proposed Collective Bargaining Committee in disputes and bringing into play the less parochial interests of the national management and union organizations, there should be significant incentives to resolve problems between labor and management without resorting to work stoppages. Also, the bill's proposed requirement, that any settlement is subject to approval by the national organization to which the local labor organization involved in a dispute belongs, should help to avoid patently unreasonable requests by local labor organizations.

This, CISC was able to do. However, this proposal lacks one of the main levers that CISC had. Although seldom used, CISC had the power to disapprove a proposed settlement. This lever encouraged the parties to a dispute to attempt to reach a reasonable agreement. We believe that such authority should be given to the proposed Construction Industry Collective Bargaining Committee. While we would, of course, hope that that authority would be seldom used, its mere existence would be very helpful and is necessary. We urge the Committee to amend the bill to that end. We, then, urge that the Committee move quickly on this important legislation.

Thank you for the opportunity to appear today.

ATTACHMENT 'A'



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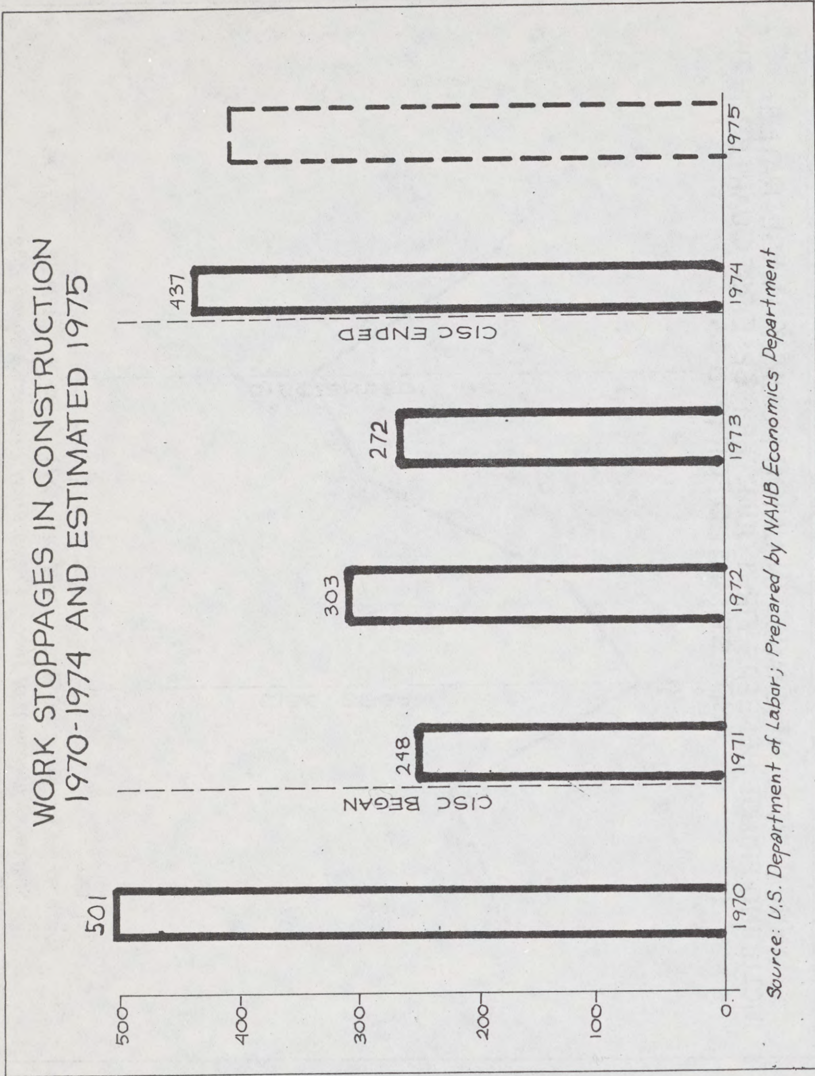


NATIONAL CONSTRUCTORS ASSOCIATION
DESIGNERS & ERECTORS
OIL REFINERIES—CHEMICAL PLANTS—STEEL MILLS—POWER PLANTS

MAURICE L. MOSIER
Executive Vice President

1101 15th Street, N.W.
Washington, D. C. 20005
(202) 466-8880

September 10, 1975

The Honorable Harrison A. Williams
Chairman
Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Senator Williams:

The National Constructors Association is comprised of 48 engineering and construction companies which design and build heavy industrial facilities on a union shop basis. Your committee is currently considering S. 2305, the Construction Industry Collective Bargaining Act of 1975 and I am writing to express the Association's support for this measure.

Something, of course, must be done to remedy the chaotic conditions under which collective bargaining in the construction industry operates. Literally thousands of local unions throughout the United States compete with each other for rate increases, and are determined not only to get more each time they negotiate, but also to get more than their brother unions. When this propensity is tied to the immense power of the building and construction trades unions as opposed to the contractor, the result is a series of excessive wage settlements which in recent years has become a characteristic of construction industry collective bargaining. When such a strong inflationary force exists in the nation's largest industry, it is the public which ultimately suffers.

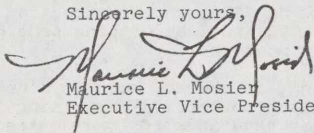
The Secretary of Labor recognizes the problems of the construction industry, and his recommendations are a most constructive first step toward their solution. The basic concept of the Construction Industry Collective Bargaining Act is excellent. It seeks to establish a construction industry committee which could take jurisdiction over any dispute, could impose a 30-day moritorium on strikes in an effort to mediate a new agreement, and could guide collective bargaining in the industry to a reasonable conclusion. It may provide a basis for the shifting of power from the local level, where such power, in many cases, has been demonstrably abused, to a national level, where a far more responsible application of the power can be expected. With

national contractor organizations and international unions injecting themselves into local negotiations, the process can be expected to be conducted in a far less provincial and self-interested atmosphere.

The bill is not perfect. A real solution to the many problems of the construction industry in collective bargaining requires a major infusion of more power into the management side. The ability of the building and construction trades to fragment the power of the contractors, and to strike one contractor while the strikers work for other contractors must be significantly reduced. Contractors must be permitted to bargain as units and to arrive at their settlements with the unions as one. Only then will a reasonable parity exist in the bargaining power of the two sides, and only then will the industry begin to stabilize.

However, the deficiencies of the bill are insufficient to outweigh its merits. I strongly urge you and your committee to approve this measure with dispatch, so that this important first step can be taken, and the journey on the long road to stability and reason in the construction industry can begin.

Sincerely yours,



Maurice L. Mosier
Executive Vice President

STATEMENT OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.
ON
S. 2305, THE CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT
BEFORE THE
SENATE LABOR SUBCOMMITTEE

Mr. Chairman, Members of the Committee, the National Electrical Contractors Association is the national recognized spokesman for the electrical construction industry. This industry is made up of more than 28,000 electrical contractors, most of them small businessmen. These contractors employ more than 250,000 organized electrical workers of the International Brotherhood of Electrical Workers.

Despite the rapidity with which this measure was drawn up and introduced, our Association has given each of its members the opportunity to examine this legislation and to make his opinion known to us. The response has been overwhelmingly in favor of the measure.

Fragmented, whip-saw bargaining in the construction industry led to tremendous imbalances in traditional inter-trade relationships in the industry in the late 1960's and early part of this decade. The President responded to these imbalances by establishing the Construction Industry Stabilization Committee six months before controls were imposed on any other sector of the economy. The CISC, with its heavy accent on industry participation, worked well to stabilize industry bargaining and resultant agreements.

The Electrical Construction history has more than a half-century tradition of constructive and progressive labor-management relations. We have become known as the "strikeless industry" as a result of this mutually beneficial cooperative relationship. However, while we have made great strides in resolving differences amicably and in stabilizing our own portion of the industry, we are

59-964 O - 75 - 11

subject to the influences of settlements in other trades. Such agreements can destroy traditional craft relationships.

From our own experience, we feel that a cooperative attitude and a desire to reach mutually acceptable terms in bargaining agreements can be successful. For that reason we strongly support the basic concept in this legislation, which would leave bargaining basically in the hands of the two parties concerned, yet provide strong incentives for peaceful settlement.

The thrust of the legislation, as we understand it, is to provide an environment conducive to constructive collective bargaining for all segments of the industry. Stability is provided by giving the Committee authority to bring in the National Associations and International Unions of the participants. Such action can provide for more objective approaches to disputes where local parties may have reached a stage of highly emotional involvement.

The provisions requiring notification 60 days prior to expiration of the agreement or its opening and allowing the Committee to forestall a strike or lockout for up to 30 days after the expiration date of an agreement would give local parties to a dispute extra time to work out their differences without the emotional pressures generated by a strike or lockout.

While the National Electrical Contractors Association believes there are other areas of reform which could be productively addressed by the Congress, the Committee is empowered to make studies and recommendations about further legislative actions which might be advantageous in reaching a

stabilized status. We feel the Construction Industry Collective Bargaining Act is a significant piece of legislation and an important step in stabilizing bargaining in the industry.

For all these reasons, the National Electrical Contractors Association supports the Construction Industry Collective Bargaining Act and respectfully urges its swift passage.

Thank you for allowing us to present our views.

STATEMENT OF

THE SHEET METAL AND AIR CONDITIONING CONTRACTORS'

NATIONAL ASSOCIATION

BEFORE THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

SUBCOMMITTEE ON LABOR

UNITED STATES SENATE

ON THE

PROPOSED

CONSTRUCTION INDUSTRY COLLECTIVE BARGAINING ACT OF 1975

S. 2305

Mr. Chairman and Members of the Committee:

This statement is being submitted to clarify the position of the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), in light of the recent controversy surrounding S. 2305, entitled the Construction Industry Collective Bargaining Act of 1975.

SMACNA has for years been in favor of reform of the collective bargaining process in the construction industry. We have actively pursued and supported efforts to do so, however, we do not feel that S. 2305 has the ingredients to stabilize the construction industry. We think it is important to establish a balance at the bargaining table between labor and management. The bargaining imbalance which has existed for years has seriously contributed to the excessive wage and fringe benefit settlements

which have in turn contributed to the inflationary spiral. S. 2305 creates an even greater imbalance in one of its provisions by placing the ultimate responsibility of a consummated labor-management agreement in the hands of international unions at the national level without similar management authority. Thus, not only does the final contract consummation move from the local to the national level, but, more specifically, it is placed solely in the hands of labor. Bargaining at the national level in and of itself can be a good concept, but here again, why is it considered necessary in S. 2305 to give management even less say so than before?

Collective bargaining "reform" in the construction industry has all the outward appearances of motherhood, applie pie and the American flag. However, any legislation to that end must address itself to the realities of collective bargaining and the relationship of labor and management in the construction industry. SMACNA sees little, if any, meaningful and substantative reform in S. 2305 as proposed. Any reform should address the problems by correcting the ills and problems through permanent restructuring. S. 2305 seeks a temporary solution to an ever-existing problem. It resembles the machinery of the construction industry stabilization committee (CISC) which attempted to slow down inflation by involking temporary controls. The record of CISC initially showed restraint in wage settlements, however, since its dissolution we have had most areas "catch up" to current levels and have received increases far in excess of the

national average, cost of living index, consumer price index, et cetera. The effects of S. 2305 will be no different. The powers of the Committee to consider local contract disputes is optional and not mandatory. The existence of effective dispute machinery in the crafts is sparce and certainly an international union president is reluctant to come up with a restraint on wages and fringes which would be unpopular with one of his constituent local unions. Although such authority in the hands of international unions can be very beneficial, it becomes a very dubious distinction when such a responsibility is not shared with the respective management associations. This leaves the persuasiveness of the Collective Bargaining Committee Members as the last resort for responsible settlements. This is an impossible task, at best, even with the best of persuasive powers, to-wit: the operation of the CISC.

S. 2305 is being represented as endorsed by both management and labor. This is a misunderstanding, because there are a number of construction management groups who are definitely not in favor of this proposal and more importantly, most construction management groups were not consulted in the drafting stage nor after it was finalized. Some token information was given to the Counsel of Construction Employers of which SMACNA is a member, however, the information was not specific until Friday, September 5, 1975. It was then introduced in the Senate on September 9 and the House on September 10. Hearings were held immediately thereafter without any further consultation or opportunity to weigh all of the

ingredients of this legislation. Furthermore, it is our understanding that S. 2305 is supposed to be a "trade off" for S. 1479, Common Situs Picketing. This is totally unacceptable. We are discouraged, dismayed and extremely disappointed with these tactics. If this legislation is truly significant in its reform then it could stand scrutiny from any and all factions within the construction industry. Anyone who has taken the time to analyze HR 9500 and who understands the construction industry must oppose it because it does not have the ingredients necessary to effectively satisfy the intent; namely, "to promote peaceful resolution of disputes between labor and management." SMACNA urges all Members of Congress to obtain an accurate picture of the bargaining realities in the construction industry. Only then can the proper steps be taken with legislation which addresses the problem and not just the symptoms.

SMACNA does not take this position without having some very realistic solutions which could be considered. SMACNA's very existence is dedicated to stabilizing the collective bargaining process. For years the sheet metal industry has had a no-work-stoppage grievance and contract settlement procedure but even then negotiations have been an essential ingredient and must take place at the bargaining table. SMACNA's experience with this machinery points out again that only when those representatives at the table are equal in the authority they receive from their respective constitutents can responsible bargaining take place.

Under present law all members of a union are represented at the bargaining table by their duly authorized committee. This is not true for management. We submit that when all contractors in the industry, just like all union workers in the industry, are represented by their collective bargaining committee then a balance between management and labor could be brought about in the best interest of the consumer (public) who, in the final analysis, will pay for any and all increases. This kind of reform suggests equality in its restructuring. The ingredients of this proposal also suggest greater effectiveness on the part of labor as well as management at the bargaining table.

If this Committee or anyone else desires further information from SMACNA on this issue, we would be most happy to supply it. In the meanwhile, SMACNA respectfully and strongly urges that S. 2305 be opposed as written, unless it includes meaningful and permanent restructuring of the collective bargaining process in the construction industry. Thank you for granting us the opportunity to present this statement.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210

SEP 30 1975

Honorable Harrison Williams
Chairman
Committee on Labor and Public Welfare
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

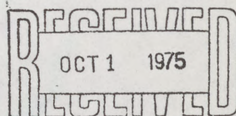
As requested by Counsel to the Committee, enclosed are responses to questions raised by the Associated General Contractors of America in its testimony on S. 2305, the "Construction Industry Collective Bargaining Act of 1975."

I hope that this information will be of assistance to you.

Sincerely,

William J. Kilberg
Solicitor of Labor

Enclosure



RESPONSES TO ISSUES POSED BY THE ASSOCIATED GENERAL CONTRACTORS

1. Any bill developed for these purposes should contain no automatic expiration date. If such legislation is needed at all its need should not be terminable any more than the Taft Hartley or the Landrum-Griffin Acts are terminable. Amendable or repealable, yes, terminable, no.

1. The legislation proposes to establish a mechanism for the improvement of collective bargaining in the construction industry. It attempts to encourage the parties to alter their bargaining conduct so that it is more responsible and more responsive to broader economic realities. This legislation is experimental. After several years of experience, it will be possible to determine whether continuation of the legislation in its present or revised form is appropriate or whether conditions have improved to the point where it is no longer necessary. The bill provides for appropriate reports to the Congress concerning progress under the legislation and recommendations concerning its continuation.

2. Such legislation should be for the single purpose of improving the collective bargaining relationships between construction unions and construction contractors who employ workers represented by those unions. Lawyers and the courts will certainly interpret the legal intent of this legislation for years, and to preclude any future possibility that the influence of the Construction Industry Collective Bargaining Committee may become lost along the way, or that the courts may have to decide the Congressional intent of the legislation, we suggest that a sub-section be added to Section 2. The new sub-section would read as follows:

> Nothing contained in this Act shall apply to construction contractors when operating without collective bargaining agreements.

One of our concerns in this area is that those contractors who have elected to operate two companies, one without collective bargaining agreements as well as one with collective bargaining agreements, could suffer by an international requiring, prior to approving an agreement, that a clause be written into his collective bargaining agreement that he could not operate his other company on a non-union basis.

2. It is clear that the legislation is only intended to apply to employers working under collective bargaining agreements with local unions and other subordinate bodies affiliated with standard national construction labor organizations. The notice provisions of section 4(a) are explicit in this regard. The provisions of section 5(a) and (b) apply only where notice has been given pursuant to 4(a). The contract approval language of section 5(c) again makes it clear that there is applicability only to subsequent collective bargaining agreements and that agreements with unaffiliated unions are not covered. It should be emphasized that the bill would not legalize provisions of collective bargaining agreements not otherwise lawful under NLRA and other provisions of laws.

3. Collective bargaining agreements, the negotiation of which would be subject to such legislation, should have a common expiration date, determined by the Construction Industry Collective Bargaining Committee. With all agreements expiring on the same date, there would then be no economic increases which union negotiators could establish as a floor for their economic demands without regard to the state of the economy.

3. Section 6(c) of the bill explicitly provides that one of the standards for committee action is the encouragement of

collective bargaining agreements embodying appropriate expiration dates. The bill does not authorize the Committee to impose common expiration dates or to impose any other terms of any collective bargaining agreement. Such an approach would be contrary to the basic thrust of the legislation which is to encourage more responsible bargaining by the parties rather than to establish federally imposed solutions to construction industry collective bargaining issues. Moreover, any such federally imposed solutions would deny the parties the flexibility to deal with any special circumstances which might be applicable in particular situations.

4. All wages, fringe benefits and other monetary provisions of collective bargaining agreements should become effective on or after the date agreement is reached, and there should be no retroactive payments. If retroactivity were prohibited by law it would serve as a deterrent to those unions which refuse to bargain seriously until a pattern of settlements is developed in other negotiations in the area. This sort of delaying tactic often results in strikes, because such unions attempt to secure higher settlements than contractors have reached with other unions thereby endeavoring to disturb historic relationships among the unions.

5. When a collective bargaining settlement requires ratification by the membership of the labor organization, voting should be limited to those members actively employed by the employers involved. Some local unions represent workers employed under several different collective bargaining agreements. To permit union members who will not be working under the provisions of the agreement presented for modification to vote results in the rejection of too many agreements worked out in good faith by negotiating committees. Those who vote on a

proposed agreement which will not affect them are likely to vote to reject, since they have nothing to lose. In fact, they may gain by pushing up the ultimate settlement since by so doing it is likely they will receive a higher increase than they otherwise would in the next negotiation of the agreement under which they will work.

6. Multi-employer bargaining units should have the same status under law as unions enjoy which is that the multi-employer bargaining units be recognized as exclusive bargaining agents for all employers who will employ, on like work, men represented by the union. Presently, an employer not a member of the multi-employer bargaining group may enter into an interim short form agreement which typically provides that the employer will pay, on a retroactive basis, any economic increase negotiated by the recognized multi-employer bargaining group. Under such agreement the employer continues to employ workmen represented by the union while the union is on strike against members of the multi-employer bargaining group. Other contractors working under national and project agreements may elect to follow the same course of action. Interim agreements, national agreements and project agreements prejudice the ability of the multi-employer bargaining group to reach a reasonable settlement with the union. Such agreements should be barred.

4, 5, & 6. These suggestions are outside the intended scope of this bill. It was not intended that this bill provide for Federal regulation of contract terms or to disturb the present law or procedures governing the establishment of bargaining units, or voting procedures. As indicated above, the purpose of the legislation is to encourage a bargaining structure in the construction industry which will facilitate more responsible bargaining by all parties. The suggestions made in items 4, 5, and 6 would raise many complex questions in terms of their relationship to the existing labor laws.

7. The Construction Industry Collective Bargaining Committee should automatically take jurisdiction over every negotiation for which they have received notice. The interrelation among negotiations in our industry requires that the provisions of the Act come into play in each negotiation so that unstabilizing situations may be handled as they develop.

7. To require an assertion of jurisdiction in all cases would necessitate a large bureaucracy and would seriously impede the Committee in its efforts to concentrate on those problem areas requiring greatest attention.

8. The Construction Industry Collective Bargaining Committee, in place of the international union involved, should approve or reject all collective bargaining agreements subject to its jurisdiction. The rejection of any agreements should be only because a provision or provisions would increase costs to a degree which would prove unstabilizing. This provision would provide an opportunity for experienced leaders representing labor, management and the public to review agreements reached. A broad based review would, we believe, prove most beneficial to the industry and to our customers.

8. As indicated above, the focus of this bill is to encourage the parties to bargain in ways which are consistent with their own long term best interests and the public interests. Long term results can be achieved only by changes in bargaining patterns by the parties themselves. Such results cannot be achieved through Federal regulation of the terms and conditions of collective bargaining agreements, an approach which would border on compulsory arbitration.

9. The Act should set forth in clear language the responsibilities of the labor and management national organizations when they are called upon by the Committee to provide effective mediation and conciliation services. As Secretary of Labor Dunlop pointed out in his testimony, there have been several plans put forth over the years which depended upon voluntary action on the part of international labor organizations and national employer associations to provide services to assist in making collective bargaining more effective. These plans failed, and any plan which does not require, by its terms, responsible action also will fail.

9. The improvements which this bill seeks to achieve can only occur if the parties cooperate fully and voluntarily to bring about this result. The nature of such action will, of course, depend on the particular facts of each case The bill provides that the Committee would seek national management and labor involvement only to the extent that it believes such involvement would serve the enumerated standards and purposes of the Act. If the Committee believes that such involvement would be useful, it would seem inappropriate and unnecessary to impose specific restrictions on the mediation and conciliation efforts involving private national organizations and their constituent members and affiliates. Such an approach would intrude needless rigidities into the statutory framework.

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