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IMPROVED LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

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HEARINGS

BEFORE THE

COMMITTEE ON CIVIL SERVICE

OF THE

COMMITTEE ON

OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 13, H.R. 1589, and H.R. 9094

BILLS TO IMPROVE LABOR-MANAGEMENT RELATIONS IN THE
FEDERAL SERVICE, AND FOR OTHER PURPOSES

SEPTEMBER 15, 1977

Serial No. 95-31

Printed for the use of the
Committee on Post Office and Civil Service



U.S. GOVERNMENT PRINTING OFFICE

96-528

WASHINGTON : 1977

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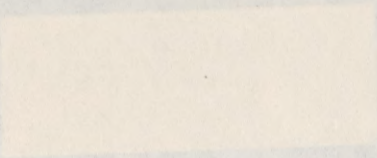


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IMPROVED LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

THURSDAY, SEPTEMBER 15, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 304, Cannon House Office Building, Hon. William L. Clay (chairman of the subcommittee), presiding.

Mr. CLAY. This morning, the hearing will be on the labor-management bill for Federal employees which Congressman William Ford and I introduced yesterday. The bill incorporates the basic features of Mr. Ford's H.R. 1589 and my bill, H.R. 13.

The new bill provides for the resolution of disputes and impasses through binding arbitration, broadens the scope of bargaining to include pay and other major money-related fringe benefits, and certain representation and dues checkoff privileges to an alternate labor union.

The provisions of this bill are not engraved in concrete. Both Congressman Ford and myself are open to suggestions for improving this bill further. As a result of the views expressed by interested parties, we may well decide to shift our approach to some details of this bill.

This bill represents a union—no pun intended—of our collective efforts. We are united in our commitment to insure that a fair and balanced labor-management relations bill for Federal employees receives consideration by the Congress as soon as possible.

The first witness this morning is Mr. Kenneth Blaylock, president of the American Federation of Government Employees.

Mr. Taylor, do you have an opening statement?

Mr. TAYLOR. No.

Mr. CLAY. Mr. Blaylock?

STATEMENT OF KENNETH BLAYLOCK, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY JOSEPH GLEASON, EXECUTIVE VICE PRESIDENT, AFGE; AND LEO PELLERZI, GENERAL COUNSEL, AFGE

Mr. BLAYLOCK. Mr. Chairman, members of the subcommittee, I appreciate this opportunity to testify on the substantive issues raised by the subcommittee staff discussion draft of September 8, 1977.

My prepared statement will be very brief and will focus on two major substantive issues.

First, we are concerned about the provisions for reforming the white-collar pay system, as set forth in new sections 7114 and 7115.

Although we would certainly like to see pay eventually included within the scope of bargaining, it does not seem appropriate at this time to include pay within a general collective-bargaining bill aimed at correcting the basic flaw in Federal labor-management relations; namely, the lack of a statutory basis. We already have systems for white- and blue-collar pay setting, achieved after extensive legislative study, which are statutory and which on the whole are functioning well, especially the wage grade system.

We believe it will unduly complicate and delay the basic bill to include any part of the five or six statutory pay systems in it.

Indeed, insofar as the white-collar pay system is concerned, our major problem at the present time is the need for a fair and efficient way to resolve disputes between the President's pay agent and the labor union members of the Pay Council. An interpretation of the Pay Comparability Act may be adequate to solve this problem or an agreement may be worked out by the President's agent, the Employees' Pay Council, and the Advisory Committee. If not, we will propose and support amendments to the Comparability Act that will correct deficiencies in the existing process.

In short, we feel that adding these complex, controversial, and very important pay systems provisions to an already complex and controversial collective-bargaining bill will seriously hamper the passage of this legislation which we believe is long overdue now.

Therefore, we strongly urge that sections 7114 and 7115 be deleted from this bill and considered separately in connection with amendments to the basic pay statutes.

The second major issue, of course, is that of the establishment and institutionalization by statute of the concept of an alternate labor organization.

We believe that—

First. An exclusive representative once certified by the proposed authority should be the only organization that agency management may negotiate with on conditions of employment affecting employees in a bargaining unit, including dues checkoff.

Second. There should not be two different classes of exclusive representatives, one elected, the other "designated." Among other things, this would discriminate severely against all employees in units represented by a labor union placed in the inferior designated class. Such a union would be inferior in financial resources, in the unified support of unit employees, in its bargaining position with management, and in many other ways.

Third. Any labor organization other than the exclusive representative should not share in the funds resulting from a statutory or negotiated union security provision.

Fourth. The existence of two recognized union representatives for employees in the same unit would destroy necessary solidarity among unit workers in dealing effectively with unified agency management, would encourage agency management to play the two unions off against each other in ways limited only by management's imagination and good faith, would create continuous conflict between the two unions, would cause division and dissension among unit employees,

and would inevitably lead to unstable labor relations and deterioration in operations and service to the public. This concept finds no support in labor law and indeed would seriously disrupt and distort the precedential value of existing labor law principles for application to Federal sector collective bargaining. It would, to be blunt, create chaos, in a bill which has as its central purpose the creation of fair and stable labor relations in the executive branch.

In addition to the two major issues I have just covered, AFL-CIO and AFGE have previously submitted to the committee a number of comments, orally and in writing, on the committee discussion drafts. A number of these have been accepted and are reflected in the latter of the two drafts, for which we express our appreciation. We hope to work closely with the committee in further perfecting the bill. We commend the committee and you, Mr. Chairman and Mr. Ford, most highly for your collective and individual efforts to develop and enact a labor-management bill for the Federal sector.

With the conditions noted, we fully support the enactment of this bill. That concludes our brief statement, Mr. Chairman. We would be glad to answer any questions.

Mr. CLAY. Thank you.

On page 3 of your statement, at the very top, you say there should not be two different classes of exclusive representatives, one elected, the other "designated." Would you elaborate on that, please, for the committee?

Mr. BLAYLOCK. Yes.

In the language of the bill, it refers to a designated union, a designated representative. The other, of course, is the organization which the majority of the members of the unit—the members of the unit have been given an opportunity to vote, and a majority have voted in favor of representation and have been certified.

It appears to us that that particular provision establishes two different classes for an exclusive representative within the same bargaining unit.

Mr. CLAY. How many classes are there now?

Mr. BLAYLOCK. Right now, you have one. You either have an exclusive representative or you do not have an exclusive representative.

Mr. CLAY. Are all of your exclusives elected?

Mr. BLAYLOCK. Since 11491, all of them definitely are. There were some from 10988 that were grandfathered in a designated category, but we did not interpret this that you would be dropping back and picking up those particular units that have carried over.

We were looking at this in the future and assuming that you were saying that, you know, there would be a method of designating representatives.

Mr. CLAY. What percentage of your exclusives have been elected?

Mr. BLAYLOCK. I cannot really answer that. I could do some research and give you that number.

Mr. CLAY. Is it a substantial number?

Mr. BLAYLOCK. I would say yes.

Mr. CLAY. Are you now proposing that all exclusives be elected?

Mr. BLAYLOCK. Definitely so.

Mr. CLAY. Even those who have been designated?

Mr. BLAYLOCK. If you are saying to back up and run elections in the carryover from 10988, I do not think it would be necessary, Mr. Chairman, where we have had a history of collective bargaining, and, in many cases, under 10988 the agencies have the authority to determine the method by which, you know, the unions were certified, and, in many cases, they did hold elections under 10988. Some did, and some did not, so that we would have to do some research and very possibly could determine how many of ours were designated without election, but many of them were by election. I am sure that many of them had the same experiences under 10988.

Mr. CLAY. Would you differentiate for us the difference between negotiation and consultation?

Mr. BLAYLOCK. Yes. Our simple interpretation is that consultation really has no meaning. That means that they are going to let you know they are going to do it, and then they do it, and they have met the criteria. That has been the application, under our experience. So we do not put a lot of confidence in consultation.

Mr. CLAY. I mean in terms of consultation with management by other groups. I think you infer in your statement that it would cause chaos and so on.

Mr. BLAYLOCK. Yes. You know, we have that conflict ongoing now with different associations and agency-type committees that are established.

It is our opinion that once you have an exclusive representative, and whatever the criteria of the rights of that representative, 11491 sets the parameters now, and we collectively bargain on personnel policies, practices, working conditions, and so on.

We do not feel that any other association or organization should be able to enter that parameter where the exclusive representative that has been selected by the employees has the right to bargain.

Mr. CLAY. Is there a difference between negotiating and consulting?

Mr. BLAYLOCK. From the dictionary, there is a difference. In application, there had not been. You know, it depends on the interpretation of the agency. Our experience has been to consult and basically, as I said, they let us know it is going to happen, and they do it.

Mr. CLAY. No; I mean these other groups that you are talking about. You would not prohibit other groups from consulting with management about working conditions?

Mr. BLAYLOCK. I have no problem with management consulting with other groups as long as that consultation does not override the negotiation process with the exclusive representative.

In other words, we negotiated a contract, and we have, say, a merit promotion plan that has been negotiated. Then that contract, as far as we are concerned—the negotiated agreement—that is it. We do not think that management should make changes as a result of consultation with other groups.

Mr. CLAY. What if there are some interests that your union did not provide for and protect in negotiations? Do you then feel that other groups have a right to pursue those interests and to make them known to management, and suggest and recommend changes?

Mr. BLAYLOCK. The only interests that we would not be representing, Mr. Chairman, would be those outside of the bargaining unit; and if management makes changes affecting those employees, it does not come within the parameter of the collective bargaining agreement anyway, so we have no problem with that.

We would be negligent in our responsibilities, and it should be handled that way, if we do not represent the interests of the employees in the bargaining unit.

Mr. CLAY. I am thinking of particular groups like the NAACP who think they have a vested interest in nondiscriminatory employment of persons in the Federal Government.

Mr. BLAYLOCK. We have a very vested interest there ourselves and, as you well know, we coordinate very closely with NAACP and several other organizations that have a special interest, and they do have membership or interest within our bargaining units, but equal employment opportunity, for instance, is one of our committee goals also, as you well know.

We would more than welcome comments and suggestions and requests if the feeling is that we are not representing the needs of any special interest that is in that bargaining unit. We are more than willing to work with those people to see that we represent them through the collective bargaining process under the recognition—if we held that recognition.

Mr. CLAY. Mr. Solarz?

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

Mr. Blaylock, I apologize for not being here at the beginning of your testimony. I would appreciate it, at the risk of asking you to repeat part of what you may already have said, if you could let us know what provisions in this legislation other than the section which breaches the doctrine of exclusivity, that you object to.

Are there any other provisions in the bill that you would like to see either eliminated or amended?

Mr. BLAYLOCK. Yes, Congressman, in our testimony, we picked up on two major points that concern us, and the other is including the pay-setting process in this particular bill.

It is our opinion that, for one, you only include one pay system. There are several pay systems in Government. No. 2, the process as spelled out in your bill complicates beyond the existing pay system, and we have had some serious problems with the white-collar pay, as you well know. We do feel that the best approach there—and we strongly support collective bargaining for pay; do not be misled to think that we do not in principle—but we think it would be simpler to amend the existing Comparability Act to provide for a process of resolving dispute between the Pay Council and pay agents than it would be to include it in this labor-management legislation.

Mr. SOLARZ. Are there any things which you would like to see in the bill which are not in it right now which would strengthen it, from your point of view?

Mr. BLAYLOCK. We have, of course, been working with the committee staff in several areas on the bill. There have already been quite a few changes.

Al Johnson has worked, I believe, with all of the unions in trying to incorporate those problems that we had and those things that we felt needed to be in there.

In the statutory area, for instance, there is some concern. Again, it is our opinion that we can simplify the appeal systems in Government considerably by having one single appeal system. Where you have a collective bargaining agreement, you handle those problems under that agreement, and you use arbitrators, and you settle the problem at the lowest level possible with a third party, and that gives integrity to the system, and it expedites it.

Of course, we have had those discussions. We are quite satisfied with the scope of negotiation as the bill covers it. We have no major problems with other provisions.

Mr. SOLARZ. Is it your judgment that the definition of "an alternate labor organization" contained in the bill would apply only to the National Alliance, or would it apply to other competing or rival organizations?

Mr. BLAYLOCK. As it is written, it just almost puts a name on it.

Mr. SOLARZ. There is no other existing labor organization?

Mr. BLAYLOCK. No, sir.

Mr. SOLARZ. Would it be possible for an organization to come into existence which met the definition contained in the bill?

Mr. BLAYLOCK. No, sir, not the way I read it.

Mr. SOLARZ. Do you think the adoption of this legislation, with that provision included, would perhaps create a precedent which would, over the long run, significantly weaken the doctrine of exclusivity with respect to the organization of Federal employees?

Mr. BLAYLOCK. Definitely. Yes, it would.

Mr. SOLARZ. Are there any units of State or local government that you are aware of that permit rival labor organizations to represent workers in the same shop?

Mr. BLAYLOCK. Not that I am aware of. We are advised by our legal people that this would set a precedent. There is no precedent for this.

Mr. SOLARZ. You will forgive my relative ignorance on these matters.

Are there any in the private sector? Are there industries or sectors of the economy where there are rival unions that, in effect, represent workers in the same shop?

Mr. BLAYLOCK. Not that we are aware of.

Mr. SOLARZ. So this would be almost a unique kind of arrangement, unprecedented in either the public or private sector.

Mr. BLAYLOCK. As far as we can determine, yes; you are right.

We feel there is one labor organization that has been selected through the process of the employees having the opportunity to vote for representation, and a majority of them have voted.

Then you have a smaller organization that has, say, 10 percent, and you give them a financial base. So you are going to have a constant, ongoing rivalry between the two units. It is going to be disruptive on the work force, and it is going to severely disrupt the labor peace that, you know, that is present in the private sector, and the application in the Federal sector.

There has been an attempt to have an open period whereby on a recurring basis the employees do have an opportunity to voice their concerns with the organization, but you have a period there whereby both management and the union can develop some type of a stable relationship without being disturbed by this unit determination issue.

Mr. SOLARZ. I am more or less convinced that exclusivity is in the interest of both management and labor alike, in the long run. I would be very reluctant to see any breach of that principle.

At the same time, I think it is important to protect the right of workers—if they are unhappy or dissatisfied with the labor union organization that is representing them—to have a vehicle or mechanism whereby they have an opportunity to get new leadership.

Within the framework of the system, assuming that we deleted that provision in the bill, is there a mechanism whereby postal workers—if they decided that the union just was not doing a good job—could get another bargaining agent?

Mr. BLAYLOCK. The vehicle there, as it exists right now under Executive Order No. 11491 and also in the private sector under the NLRB is that you can only have a bar for 3 years. Then you have an open season.

So the people have the right during that open season to challenge. That is one vehicle. The other is decertification. Decertification petitions can also be brought.

Mr. SOLARZ. How many have to sign such a petition to get an election?

Mr. BLAYLOCK. Thirty percent.

Mr. SOLARZ. If 30 percent of the covered workers want another union, they sign a petition to that effect?

Mr. BLAYLOCK. Which is the same criterion. You have to get 30 percent initially for showing of interest to file the initial RO petition.

Mr. SOLARZ. So no one can claim that these people are prohibited from getting a new labor union organization to represent them if they can persuade 30 percent of their colleagues to decertify. Then there has to be an election, and the majority wins?

Mr. BLAYLOCK. Yes.

Mr. SOLARZ. They are not permanently locked into this union, even if 90 percent want another union.

Mr. BLAYLOCK. By no stroke of the imagination are they locked in.

Mr. SOLARZ. Thank you very much.

Mr. CLAY. Mr. Taylor?

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. Blaylock, back to your comments relative to the Pay Comparability Act.

It is my understanding that, in your judgment, it would not be wise to address this particular problem in this legislation. It is your feeling that with negotiations and possibly with change of interpretation that the present procedure is adequate.

Is that true?

Mr. BLAYLOCK. In my judgment, Congressman, it would be simpler and less controversial. We may be able to work out administrative changes under the existing act. I am not real optimistic. I have seen some movement in this administration, but, you know, the person that gives can also take away.

I do think and we are convinced that it would be simpler, if we are trying to correct the problems of the pay system, to make amendments to the basic Comparability Act whereby we do have a method of resolving disputes between the pay council, which is a union representative, and the pay agent, representing the President. We think that would be the simpler approach.

Mr. TAYLOR. So you would recommend that this not be addressed in this particular legislation at this time?

Mr. BLAYLOCK. Yes, sir.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Thank you for your testimony.

Mr. BLAYLOCK. Thank you very much. We appreciate the opportunity.

Mr. CLAY. The next witness is Mr. Vincent Connery of the National Treasury Employees Union.

Mr. Connery?

STATEMENT OF VINCENT CONNERY, PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION, ACCOMPANIED BY ROBERT TOBIAS, GENERAL COUNSEL; AND MICHAEL GOLDMAN, DIRECTOR OF LEGISLATION

Mr. CONNERY. Thank you, Mr. Chairman.

I am Vincent L. Connery, president of the National Treasury Employees Union. I am accompanied here this morning by our general counsel, on my right, Mr. Robert Tobias, and on my left is our legislative director, Mr. Michael Goldman.

We wish to commend you, Mr. Chairman, as well as Representative William Ford and your respective staffs for your diligent efforts to enact a sound and workable Federal labor relations bill. We appreciate the fact that a great deal of time and energy have been expended to produce the draft legislation now before us.

In our testimony before this subcommittee on May 3, 1977, we spoke at great length on the deficiencies of the Executive order system of labor relations, which denies Federal employees a significant voice in those areas that directly affect their working lives. At the same time, we endorsed H.R. 1589 as the best possible vehicle to provide Federal employees with full collective-bargaining rights, similar to those enjoyed by private sector workers for over 40 years under the National Labor Relations Act.

As we previously stated, we realize that certain compromises will have to be made in order to move forward a meaningful collective bargaining bill. Changes can be made in the structure of bargaining, agency shop, and right-to-strike provisions contained in H.R. 1589 without undermining the basic strength of the bill. We said then and we say now, however, that the scope of bargaining set forth in H.R. 1589 must not be narrowed. To do so would merely perpetuate the injustices of the current Executive order system and constitute a gross injustice to Federal employees.

With this in mind, we have examined the bill prepared by the subcommittee and have found that it retains many of the key features of H.R. 1589, especially those which set it apart from Executive Order 11491 and H.R. 13, the other major collective-bargaining bill under

consideration. Like H.R. 1589, the subcommittee's bill eliminates many of the features that frustrate bargaining under the Executive order.

At present, the Executive order prohibits negotiations on "higher level regulations," and any of the numerous subjects contained in the management rights clause. In addition, Congress has delegated to the Commission the authority to unilaterally implement all statutes concerning Federal personnel, including virtually every matter in title 5 of the United States Code. By opening the implementation of these areas to negotiation, the subcommittee's bill insures that Federal employees will be able to bargain on a significantly wider range of issues.

While the subcommittee's bill broadens the scope of bargaining in the Federal sector, it differs from H.R. 1589 in the area of negotiability on wages and fringe benefits. H.R. 1589 follows the example of the National Labor Relations Act by providing full collective bargaining rights on all issues at the unit level of recognition.

The subcommittee's bill, on the other hand, places responsibility for negotiating pay and fringe benefits with the Federal Employees Pay and Benefits Committee. The Committee would be composed of "representatives of labor organizations who represent substantial numbers of employees under the statutory pay and benefit systems," and consist of seven Presidentially appointed members of whom no more than four could be from any one labor organization or affiliate thereof.

The system envisioned by the subcommittee provides that the President's pay agent and the Pay and Benefits Committee jointly submit an annual report to the President containing a mutual comparability recommendation. Any issue on which the parties could not reach agreement would be submitted to the Federal Mediation and Conciliation Service for resolution. If none is forthcoming, the disputed issue would then be brought before the Arbitration Board on Federal Employees Pay and Benefits, who would render a final decision.

While this system is not, in our opinion, as fundamentally sound as unit bargaining, it does represent a vast improvement over that contained in the Federal Pay Comparability Act of 1970. Under this present law, the President's agent unilaterally determines the comparability mechanism to be employed each year, while the employee representatives have only a consultative role. The subcommittee's bill is compatible with the present system in that it maintains the structure and basic principles of the Federal Pay Comparability Act, but balances the roles of the parties to provide employees with a more meaningful voice in the determination of their pay and fringe benefits.

At the same time, this process eases one of the criticisms that have been leveled at H.R. 1589. Many have expressed doubts over the workability of several thousand pay-and-benefit systems within the Government, which would result from unit bargaining on such matters. With the creation of the Pay and Benefits Committee, however, these issues would be kept at the Government-wide level, while Federal employees would continue to enjoy greatly expanded bargaining rights at the unit level.

The subcommittee's bill also differs from H.R. 1589 in the area of dispute resolution. H.R. 1589 grants Federal employees a limited right to strike to be used only after an exhaustive process of factfinding and advisory arbitration. Under the subcommittee's bill, the final step in such a dispute would be binding arbitration. The legislation does, however, follow both H.R. 1589 and H.R. 13 in providing for the creation of an independent Federal Labor Relations Authority to oversee the Federal program, and establishes a greater degree of union security by retaining the language on agency shop.

One major departure contained in the subcommittee's bill, however, is that which mandates the establishment of a privileged role for an alternate labor organization in the new Federal labor relations program. We know of no precedent for such action in either the private or non-Federal public sectors.

Two provisions in the proposed legislation which could apply to all labor organizations, but are of particular benefit to the alternate labor organization, refer to dues withholding and national consultation rights. An organization having at least 10 percent membership in a unit would be entitled to dues withholding for its members. In addition, such an organization would be granted national consultation rights within an agency if it represents substantial numbers of employees below the agency level. This provision does not apply where agency-wide exclusive recognition is in effect.

Other portions of the subcommittee's bill are intended to protect only the alternate labor organization. For example, prior to the issuance of Executive Order 11419, a Federal union could be designated as the exclusive representative of a unit, without an election, if a sufficient showing of interest could be demonstrated and no other union sought recognition. According to the subcommittee's bill, an alternate labor organization would be granted certain representation rights in units where the existing representatives gained exclusively by means other than election.

In such cases, an alternate labor organization would be permitted to represent its members under procedures established by statute or agency regulations.

In the case of negotiated procedures, the exclusive representative would retain the sole right to act on behalf of employees. In addition, the alternate labor organization would be able to recover the cost of representing its members by receiving a proportionate share of the dues paid the exclusive representative, under a formula to be determined by the Federal Labor Relations Authority.

We have grave reservations about the implication of these provisions. Though they may be intended to promote fairness, these sections of the subcommittee's bill undermine the concept of exclusive recognition that has long been a cornerstone of the American labor movement.

When the National Labor Relations Act was adopted, this country was undergoing a period of great labor strife. In order to insure stability and orderliness in labor relations, the concept of exclusive recognition was created to allow employees to speak with one voice in their dealings with management.

The idea of another group being able to intrude upon this relationship does violence to this basic principle. When two or more labor organizations claim to speak for employees in a given unit, the ef-

fectiveness of each is so dulled that employees are left with no meaningful representation whatsoever. We believe that the provisions dealing with the role of an alternate labor organization contained in the subcommittee's bill would, if enacted, set a dangerous precedent that would weaken the foundation of the Federal labor relations program.

Despite our philosophical differences with these provisions, however, we will not oppose them at this time. Above all, we believe it is paramount that this legislation be introduced and moved expeditiously through the legislative process. We feel that it would be a disservice to Federal employees to let the provisions concerning the alternate labor organization impede the progress of a collective bargaining bill at this important juncture.

In conclusion, we believe that the subcommittee's bill is a thoughtful and reasonable effort to achieve an effective compromise collective bargaining bill. To us, the legislation retains the integrity of H.R. 1589 by including most of its key provisions, particularly those dealing with an expanded scope of bargaining. We look forward to early introduction of this legislation so that a progressive labor relations program in the Federal sector may soon become a reality. We are confident that by working together to minimize our differences, this long overdue goal will finally be attained.

Mr. Chairman, we appreciate this opportunity to present our views before this subcommittee today, and if there are any questions, I will be glad to answer them at this time.

Mr. CLAY. Thank you.

One question that comes immediately to mind is the concerns expressed by the preceding witness, Mr. Blaylock, in terms of opening the bill up for a negotiation of pay.

Do you see any reason why we should be concerned in terms of opening up that section of the bill? Is there a possibility that the blue-collar pay system may be subjected to weakening amendments?

Mr. CONNERY. I, like Mr. Blaylock, am a member of the President's Pay Council under the present state of the law.

I cannot understand Mr. Blaylock's position at all. I think this present situation is brought about by the Federal Employees Pay Act of 1970 and is an abomination. It is absolutely management-dominated; it is under absolute management control from one end of the year to the other.

The entire history of the act, since the Pay Council's first meeting in 1971 to its last meeting a few months ago, has been totally management controlled. The Federal Employees Pay Council, of which we are both members, has nothing to say, really. We are told what is going to happen, and in every instance it happens exactly that way.

The act also provides for a Presidential Pay Advisory Committee. In most of the years, the Advisory Committee has agreed in substance with the President's Pay Council. Yet the President has never paid any attention to the Committee. He has listened only to his own agent, and how Mr. Blaylock can feel as he says he does is absolutely beyond me. I could not attempt to explain it.

Mr. CLAY. I assume you are unhappy with the present system.

Mr. CONNERY. For 4 years, I have publicly called for its abolition.

Mr. CLAY. Except for the issue of alternate labor union—and you stated that you would not oppose it at this point—then you do support the basic thrust of the bill, is that correct?

Mr. CONNERY. Yes. I could not get terribly excited about its being in or out. The important thing in this entire field of labor relations—and what I am terribly concerned about—is getting a mechanism whereby the Federal employee is given a substantive role in what is going on.

At the present time, the Federal employee, because of the narrow scope of bargaining, is denied this opportunity, and it is much the same as the situation that we have just discussed relative to the Pay Comparability Act.

The Federal employees' representatives are given no substantive role in that process. The committee's bill will provide them with a substantive role, and I would not quarrel or quibble over what I consider minor matters.

Mr. CLAY. Thank you.

Mr. Solarz?

Mr. Solarz. Thank you, Mr. Chairman.

Mr. Connery, your testimony reminds me a little bit about a story they tell about Erwin Steinga who used to be—very briefly, many years ago—the Speaker of the New York State Assembly. One day he was delivering a speech in favor of some legislation, and he gave a very persuasive and convincing argument in favor of the bill, and just as he was about to sit down one of his aides rushed up to him and whispered in his ear that Governor Lehman was actually against the bill. Whereupon he said, "I am just giving you all the arguments in favor of the bill; now let me tell you why I am against it." [Laughter.]

He proceeded to convincingly demonstrate why the bill should be defeated. I say that because after two pages of eloquent testimony about the dangers which would result from the adoption of this bill, with a provision on alternate labor organizations intact, you then say that in spite of your philosophical differences you will not oppose them at this time.

Just out of curiosity, I would like to know why—if the adoption of this provision would create all of the problems that you have described—you are not opposed to it at this time?

Mr. CONNERY. Because, as I indicated in the statement, I would not want to see this particular issue grind this entire operation to a halt once again. Federal employees, I think, are entitled to more than that.

I am certain that Federal employees, as a whole, would not consider this matter all that important to them, but the vast majority of these employees are just simply fed up with the charade that the Government has set up and called a labor relations program.

Mr. SOLARZ. You are talking about the bill in general.

I understand that, but on this particular provision—are you for it or are you against it?

Mr. CONNERY. I am against it.

Mr. SOLARZ. But you are not opposing it because you are concerned that if there were major opposition to that provision that it might result in either the defeat of the entire bill, or it might get caught up in the political process, and there would be no bill at all. What you are saying is you would prefer a bill with it, to no bill at all.

Mr. CONNERY. Right.

Mr. SOLARZ. If you could get a bill without it, you would prefer that.

Mr. CONNERY. Exactly.

Mr. SOLARZ. I thought your testimony was quite helpful, by the way, particularly in contrasting the differences between some of the earlier versions of legislation and the one which has been the result of our chairman's prodigious efforts. It is no accident that one of his predecessors in the Congress was known as the "Great Compromiser." [Laughter.]

I have no doubt that his spirit has been revised in the presence of his contemporary namesake, but, in any case, I would like to know how you feel about this question of a limited right to strike.

You mentioned the fact that it was left out of the current version of the bill, and it was in some of the previous ones. Would you like to see that included?

Mr. CONNERY. Yes.

Mr. SOLARZ. Would you be concerned, if it were, that legislation might run afoul of the same kinds of political problems that the alternate labor organizations would?

Mr. CONNERY. Yes. That is what I stated, specifically, in my May testimony before this subcommittee.

Simply put, I said that we want the right to strike. We think it is judiciously employed in the bill which we supported, H.R. 1589, and that it belongs in there. It is in tune with the experience of the Canadian Government, and elsewhere. But if something had to go out of the plane first, that could be it.

Also, agency shop—we would be terribly reluctant to see that go, but if that had to go then it should. What had to stay was the scope of bargaining because if that were fooled around with or tailored away then this thing would be meaningless.

Mr. SOLARZ. I have one other question, and it also has to do with this question of right to strike.

If you had your own druthers and could get it in the bill, what form would it take? Do you think there would be any limitations on it? Should every Federal employee have such a right?

Mr. CONNERY. Yes; I think there should be limitations on it. I would ask Mr. Tobias to further enunciate the limitations.

Mr. TOBIAS. H.R. 1589 had a provision in there for limitations—health and safety—and allowed the Government to get injunctions to preserve health and safety. Rather than trying to define specific categories of employees who should or should not because perhaps a garbage strike—when there was a strike by garbage workers when it was 15 degrees below zero, it would be different than if it were 110 degrees, and, therefore, the public health and safety would be affected one way, and it would not the other way.

Mr. SOLARZ. I am sure you probably know there are those of us on this committee who, in principle, are sympathetic to that. But would it be your judgment, from a political point of view, that the inclusion of such a provision would politically sink the legislation?

Mr. CONNERY. It could.

Mr. SOLARZ. I know it could, but do you think it would? That is the \$64 question.

Mr. CONNERY. I think it would.

Mr. SOLARZ. You do not think it is worth gambling on?

Mr. CONNERY. No.

Mr. SOLARZ. You would come back and fight another day?

Mr. CONNERY. Yes.

Mr. SOLARZ. OK. We will support it when you do that.

Mr. CLAY. Do you intend to offer a right to strike bill? I will support you on that.

Mr. SOLARZ. So will Bella Abzug.

[Laughter.]

Mr. CLAY. Did you support her?

Mr. SOLARZ. No; I did not.

Mr. CLAY. For some other reason than that she supported the right to strike?

Mr. SOLARZ. I have an unblemished record of never supporting winning candidates. I did not want to sink her candidacy prematurely.

Mr. CLAY. Mr. Johnson, do you have any questions?

Mr. JOHNSON. No, Mr. Chairman.

Mr. CLAY. Thank you, Mr. Connery.

Mr. CONNERY. Thank you.

Mr. CLAY. Our next witness is Mr. John White of the National Alliance of Postal and Federal Employees.

STATEMENT OF JOHN WHITE, LEGISLATIVE DIRECTOR, NATIONAL ALLIANCE OF POSTAL AND FEDERAL EMPLOYEES; ACCOMPANIED BY JOHNNIE LANDON, COUNSEL

Mr. WHITE. Thank you, Mr. Chairman and members of the subcommittee. My name is John W. White. I am the director of legislation for the National Alliance of Postal and Federal Employees.

I expected to have counsel with us at this time, but he has not arrived.

Mr. Chairman, before I read the rest of this prepared testimony, it is interesting to read what I have in view of what I have heard. I personally appreciate what your committee has been trying to do regardless of the controversy which preceded my testimony here.

Mr. CLAY. Controversy seems to follow you. [Laughter.]

Mr. WHITE. I am very pleased to have this opportunity to appear before this committee, to express the position of the union which I am representing, on a bill which has been introduced, to provide for improved labor-management relations in the Federal Service, and for other purposes.

To open my statement I wish to say that the National Alliance of Postal and Federal Employees has, on previous occasions for the record, stated that we are in favor of and would support appropriate legislation dealing with labor-management relations in the Federal Service, as a replacement for an Executive order issued for such purposes.

We felt, and still feel, that regardless as to how meaningful and effective an Executive order may be, it is still only an authoritative action taken by a sitting President of the United States, which can be rescinded just as easily as it was granted by the sitting President, or the successor to this office. We felt, and still feel, that the impact on the livelihood and well-being of almost 3 million Federal employees, should the provisions of the Executive order be rescinded, would create a condition which would not be conducive to the best interest of our U.S. Government.

Therefore, we are in support of a form of legislation which will guarantee continuity, and strengthen the type of Federal labor-management relations to which Federal employees are becoming accustomed, and that will remain intact, regardless as to any change that may occur in the Office of the President, or develop, due to influence from any political party.

However, the position of the National Alliance on such type labor-management relations legislation, as it deals with union security and/or an agency shop, has not changed. We are unalterably opposed to provisions in any labor-management legislation which will impose union security or an agency shop, as a condition for employment in the Federal service.

Therefore, Mr. Chairman, and members of this subcommittee, my presentation to you today is for the purpose of congratulating the chairman and this committee for introducing a bill which will provide needed protection for Federal employees, who have now become accustomed to a way of life, in their dealing with their employer, while at the same time, to express opposition to certain provisions in this bill which, we feel, should not be considered as a part of this, otherwise, well meaning piece of legislation.

Mr. Chairman, we have reviewed the subcommittee's staff discussion draft dated August 4, 1977, of the bill relating to labor-management relations in the Federal service, as well as the original H.R. 13 submitted January 4, 1977, by the chairman.

Our review of this proposed legislation has been thorough and meticulous. We feel we have a basic understanding of what is being proposed with respect to labor-management relations in the Federal service.

There are several areas where we have worked on alternative language relating to: the right of employees to have representation other than by the so-called "exclusive" union, the compulsory unionism provision, and the provision relating to combining units. We will address our concerns in these areas shortly. We have been busily engaged in looking at each and every tree of this bill.

The closer we look at this legislation, however, the more we have become convinced that one needs to look at the forest as well as the individual trees.

The proposal to provide a comprehensive scheme for handling employee-management relations in the Federal service is laudable. We believe that this is a further step in upgrading the status of Federal employees. However, we urge that any legislation of this magnitude, which represents a sharp departure from what presently exists, be considered carefully since once adopted it will be almost impossible to amend or repeal.

Because of the importance of this legislation and based upon our unfortunate experience as a result of the enactment of the Postal Reorganization Act, we believe that Congress should make the language in this bill clear and precise. There should be nothing left for later interpretation as to the intent of Congress by a subordinate or judiciary body of the Government.

We have several reasons for this position.

First. This bill would be of major consequence to employees in the Federal service, many of whom are undoubtedly unacquainted with the possible benefits, or drawbacks for that matter, of the particular provisions that will govern their employment in the Federal service.

Second. The proposal contains several highly controversial sections, which might be expected any time change is being proposed; however, the millions of employees who will be affected by these controversial changes should have some vehicle for expressing their viewpoints.

Third. A new institution is being created. All affected persons, including existing agencies, particularly the executive branch, should be fully aware of the differing relationships which will be created as a result of the new institution being created. We believe that if there is complete understanding of all of the implications of the proposed legislation, there will be less likelihood for prolonged litigation once the legislation is enacted.

With respect to particular provisions of the proposed legislation we submit the following: The question of exclusive recognition which is raised in the proposed legislation fails to provide the sort of adequate protection for minorities and other dissident employees from arbitrary actions by their exclusive representative.

Let me pause briefly to say that we know what the committee is trying to do. We are not unhappy. We are very happy with the efforts that the committee has made and is trying to make under conditions which prevail, and I really mean that, Mr. Chairman.

We don't mean to suggest that minorities or dissidents should have a right to bargain directly with the agencies involved, but we do believe that they have particular interests which need articulating to the powers that be. Therefore, the right to select a representative of one's choice in grievances must be clearly spelled out, if the National Alliance is to support this bill.

Mr. Chairman, here we are 100 percent in favor of this bill, with the several exceptions which we have mentioned. We are not saying this in the sense of a threat or anything else. We are just trying to point certain things out.

We are aware of the fact that in private sector labor-management relations, black employees have to express their views through black caucuses within labor organizations, and in many instances these caucuses are not wholly, in our opinion, independent. Practically all labor organizations now have felt the sting of criticism of union policies, by internal black caucuses. One of the very noteworthy cases which we will cite for you, is what happened to the black employees in San Francisco in the *Emporium Capwell* case. In that case, a group of black employees circulated a handbill which states as follows:

"Beware, beware, beware, Emporium shoppers—boycott is on, boycott is on, boycott is on."

For years at the Emporium, black, brown, yellow, and red people have worked at the lowest jobs, at the lowest levels. Time and time again we have seen intelligent, hard-working brothers and sisters denied promotions and respect.

The Emporium is a 20th century colonial (sic) plantation. The brothers and sisters are being treated the same way as our brothers are being treated in the slave mines of Africa. Whenever the racist pig at The Emporium injures or harms a Black sister or brother, they injure and insult all Black people. The Emporium must pay for these insults. Therefore, we encourage all of our people to take their money out of this racist store, until Black people have full employment and are promoted justly throughout The Emporium. We welcome the support of our

brothers and sisters from the churches, unions, sororities, fraternities, social clubs, Afro-American Institute, Black Panther Party, WACO, and the Poor Peoples Institute.

These employees were seeking to improve the plight of black people with their employer, but the labor laws were construed in such a way as to allow the claim that these employees were engaged in separate bargaining with the employer.

We do not wish to be quoted as saying that we believe that separate bargaining for black people, or other minorities or dissidents, is the answer. We do believe, however, that these employees should have the right to be represented in the grievance procedure by persons of their choice.

We had always thought that the proviso to section 9 of the National Labor Relations Act gave employees the right to be represented by persons of their own choosing in the grievance procedure. However, Justice Thurgood Marshall, to the surprise of many and definitely contrary to the thought of many blacks, expressed the view that the proviso does not provide a right of employees to have a representative of their choosing, but was rather put in the act solely for purposes of protecting the employer.

Mr. Justice Marshall stated in footnote 8 of the *Emporium Capwell* decision that:

Any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect.

Respondent clearly misapprehends the nature of the "right" conferred by this section. The intent of the proviso is to permit employees to present grievances and to authorize the employer to entertain them without opening itself to liability for dealing directly with employees in derogation of the duty to bargain only with the exclusive bargaining representative, a violation of 8(a) (5). H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 7 (1947); H.R. Rep. No. 510, 80th Cong., 1st Sess., p. 46 (1947) (Conference Comm.). The act nowhere protects this "right" by making it an unfair labor practice for an employer to refuse to entertain such a presentation, nor can it be read to authorize resort to economic coercion. This matter is fully explicated in *Black-Clawson Co. v. Machinists*, 313 F. 2d 179 (C.A. 2 1962). See also *Republic Steel v. Maddox*, 379 U.S. 650. 85 S. Ct., 614, 13 L Ed. 2d 580 (1965). If the employees' activity in the present case is to be deemed protected, therefore, it must be so by reason of the reading given to the main part of 9(a), in light of Title VII and the national policy against employment discrimination, and not by burdening the proviso to that section with a load it was not meant to carry.

We believe that this construction of section 9(a) of the NLRA is wrong; but if it is not, then this provision of the law definitely needs to be changed. However, the bill that we are discussing deals with the public sector. We are concerned with public employees who, in most instances at this time, have the right to choose representatives of their own choosing. We contend that any legislation which would take away that right is going backward rather than forward. In our opinion the proposals we have read take away this right and give the appearance of giving something which it really does not give.

In other words, the proposals really do not provide employees with the right to present grievances through representatives of their own choosing which is such an important right to the everyday working employee.

Oftentimes an individual is discharged. This amounts to capital punishment. One may ask, should he or she be required to go to the grievance procedure or to the court with a representative or lawyer who will fight for him or her, or with a representative or lawyer who is in agreement with the employer.

We feel strongly that this is a precious and well deserved right to any human being and we are emphatic in saying that any attempt to take away the right of employees to be represented by persons of their own choosing in grievance procedures shall continue to be strongly resisted by the National Alliance.

That, too, is not meant to be a threat, Mr. Chairman.

There are those who desire harmony among laboring men. We share in that view, but we cannot forget, nor ignore those things that we have learned from our history as black laboring men and women, struggling for equality of opportunity in America. We are more than convinced now that no one else will save us, that we must save ourselves. Therefore, it is with this type of background that we approach with such caution the provisions in this well intended, labor management bill.

Hopefully, we can meet in the very near future with the subcommittee staff to discuss in detail some of the representation sections, with which we may not be in full accord, and to obtain some clarification of other sections, which we now feel may pose somewhat of a problem for the National Alliance, and the people we represent. We would, however, like to express our concern today on the following provisions of this bill.

Mr. CLAY. Mr. White, I have to interrupt you. There is a vote on the floor, and the subcommittee will recess for 10 minutes.

[Whereupon, the hearing was in short recess.]

Mr. CLAY. The hearing will come to order. Mr. White, you may continue.

Mr. WHITE. Thank you, Mr. Chairman.

With me now is Dr. Landon, our special counsel to the national president.

Mr. CLAY. Good morning.

Mr. LANDON. Good morning, Mr. Chairman.

Mr. WHITE. Under the caption "Unit Consolidation and Reorganization," Mr. Chairman, to use a much overused phrase, we hasten to state that this is not a criticism but an attempt to point out areas which we think can be strengthened.

In the language of H.R. 13: "Two or more units for which the labor organization holds exclusive recognition within the agency may be consolidated into a single larger unit if the Authority determines the larger unit to be appropriate."

In the draft bill language:

Two or more units for which a labor organization holds exclusive representation by reason of elections by more than half of the total number of employees within such units shall be consolidated into a single larger unit if the Authority deems the larger unit appropriate.

In neither bill is it specified what would trigger action by the "authority." Would the authority react to a petition by the agency or the union acting singly or must they act jointly? Could the authority act unilaterally, in the absence of a petition by the union/agency? If

so, on what basis would it act? Could individual employees petition for consolidation? If so, what percentage in a unit would be required?

Clear language in this area could allay the fears of individual employees, small unions and forestall future misunderstanding and litigation.

In the draft bill language, the authority would be empowered to certify a labor organization as the exclusive representative of a new larger unit provided elections had been held in the smaller units which would comprise the larger unit and more than half of the total employees had voted. Several problems exist in the draft language and are listed below.

One. A small unit may be represented by a small union in an agency while a larger unit may be represented by another union. The smaller union may have no desire to consolidate because of self-interest.

Two. No change in the validity of the criteria by which the units were initially established, such as, community of interest, efficiency of operation, goals, mission of the agency, and so on, is cited as a factor in the proposal to consolidate.

Three. Employees who originally voted in a unit election were voting solely on the question of whether they would be represented by a union—which union, if more than one was involved—or no union. They were not deciding the issue of unit consolidation because it was not on the ballot. Democratic participating by union members would require not only a vote on proposed unit consolidation but, also, a vote on any labor-management contract negotiated by the union.

Four. A large union which holds exclusive recognition in two or more units could reduce its vulnerability to challenge by another union, by using the tool of consolidation. Such action would not enhance the growth of unionism and could tend toward big union monopoly, to the detriment of small unions and individual employees.

Specific guidelines are needed which would eliminate capricious behavior by the authority and collusion by any parties involved. Finally, it is recommended that no units should be consolidated in the absence of an election on the question of consolidation.

Mr. Chairman, we appreciate having an opportunity to appear before this subcommittee. We will attempt to answer any questions that you or any member of the subcommittee may wish to ask.

I would also add at this point, speaking from a personal point of view, that sometimes it may appear painful to make certain observations in a statement, such as has been made here today by the alliance spokesmen.

We are aware of the climate in which this committee is functioning. We too are very much interested in putting a law on the books, but we feel compelled to place into the record—so that at least posterity can know where we stand—regardless of the outcome of this bill.

Thank you, Mr. Chairman.

Mr. CLAY. Thank you, Mr. White.

In view of the fact that the compromise bill has totally alienated all of the members of labor, I think we have come up with something good here. Certainly, I am going to support it.

Mr. White, given the fact that I cannot and will not support your opposition to agency shop, what protections would you like to see afforded to minorities which do not amount to being union busting provisions?

Mr. WHITE. Mr. Chairman, I believe, if I could rely on certain experiences, I would say if one single factor is of vital importance to the alliance in its relationship with people who seek representation which they feel they are not getting elsewhere, it would be the clear-cut right to represent a member in a Federal agency who asks us to represent that individual. If someone is afraid of the so-called proliferation of unions and outsiders, language could be used that would eliminate this phantom. If you want to call it grandfathering, let's call it that. It would recognize the existence of unions that were in existence and doing a certain thing since a certain date. We have been in Federal agencies since 1965. Perhaps with amended language, an employee could not go beyond the existing unions seeking representation.

One important thing, you could go to the exclusive or to the alliance. I am trying to answer your question.

Mr. CLAY. First of all, we have grandfathering. I do not think this definition of alternate union applies to any other union in the country, in the Federal sector. So we have grandfathering.

I think we ought to perhaps talk about some of the trees that you mentioned in the forest. You have been given a right to represent your members. You have been given dues checkoff at the expense of the exclusives. You have been given official time for representing your members.

These are some of the trees that you talk about, that we ought to be looking at, in the forest.

Mr. WHITE. For example, as I understand a part of the bill in the area of representation, where you have exclusive recognition by designation—that a representative of the alternate union could function in the parallel procedure but not through the negotiating procedure itself.

Mr. CLAY. Right.

Mr. WHITE. It would be restricted to the parallel procedure that goes up to the Civil Service Commission.

Of course, I understand in talking with members of your staff, Mr. Chairman, we get into the area of what will be the content of the parallel procedure which goes up to the Civil Service Commission and what will be taken out of it that might make it less meaningful.

As we understand it, under certain conditions you still could have dues checkoff, some proportion of the funds, but you would have no right to represent anybody after an election.

Is that right?

Mr. CLAY. That is correct.

The election that we speak of is a fair election, and you would have as much of an opportunity to have exclusive representation as anyone else in the election would.

Even in the area of exclusives, by election, you can still use the statutory procedure or process in grievances.

Mr. WHITE. Is that clear, because that was an area of concern to us? As we understood it, recognition after an election eliminated the right to choose a representative other than the exclusive.

Mr. JOHNSON. On page 28, line 5, the bill provides:

An employee within a unit with respect to which a labor organization is an exclusive representative, described in section 7103(a) 18(b), sentence two—which traces back to exclusivity which is secured by other than an election—may appoint an alternate labor organization as his representative in appeal actions, other than appeal actions negotiated pursuant to this chapter.

At another point, Mr. Chairman, the bill provides that an employee may be represented by anyone of his own choosing in processing a grievance through the statutory appeal route. Accordingly he could have—in an extreme situation—his Uncle Harry represent him.

The bill further provides, under the provision for official time, that a representative of an alternate labor organization may have official time in order to represent an employee.

Mr. WHITE. Thank you.

Mr. CLAY. One other question. Mr. Blaylock raises the question of negotiating the issue of pay. Is it your opinion that if we open up this subject to negotiations, that perhaps it would be weakening amendments?

Mr. WHITE. Mr. Chairman, you know where our burning concern has been.

We are aware of the weaknesses in the pay system. We know continuously that you do not know what the President is going to do. You do not know what anybody is going to do, whether he is going to offer an alternate plan, or whatever he is going to do.

I would think that the Alliance would support that part of the bill; certainly there are no reservations.

Mr. CLAY. Thank you.

Mr. Ford?

Mr. FORD. Thank you, Mr. Chairman.

I am sorry that I was not able to be here for the earlier part of the hearing today to hear the other witnesses.

Mr. White, you understand fully that what we have before us is an instrument prepared with a lot of blood, sweat, and tears by our chairman, as a vehicle to get people talking about specifics so we can start resolving questions and hopefully evolve some Federal legislation to develop a system of labor-management relations in the Federal sector. This statutory system should be as close to perfect as possible, of course, but obviously it will be changed over the years as experience teaches us things.

We want to get something on the books to replace a series of Executive orders, which are whimsical at best, in order to establish, in effect, a principle of legislated rights for employees in the Federal service—not necessarily the same as, but in the same manner as the private sector.

But in response to the chairman, you would seem at this point reluctant—and I know you have not had much time—but you seem reluctant to address yourself to what you refer to as the trees that make up the forest, in your statement.

Unfortunately, it contains some rhetoric that always makes the hair go up on the back of my neck, when I see language like compulsory unionism provisions in something that is an important as this.

I hope that we can get on with trying to sort out the trees from the forest and deciding which ones have to be trimmed and which ones have to be cut, without throwing this kind of rhetoric at each other, because you have just fired the opening gun for the National Right to Work Committee, and they are going to be quoting you all over the place. I hate to see my friends being quoted by those people over there. They will probably quote you wrong because they are usually inaccurate, but they will do it nevertheless and try to wrap you and the people you represent around their concepts.

I really do not think—I am not going to ask you the question, but I really do not think that we are going to get very far if the judicial tensions that the leaders of the several groups representing Federal employees have displayed in the past are going to get in the way.

We had the impression that after all these years all of the leaders of the groups representing Federal employees were of the opinion, as you have stated in your statement here, that it is time to have a statute, and it is time to get this thing on the books and have a declaration of public policy that Federal employees have lawful rights with respect to their employer-employee relationships.

It cannot be taken away by an Executive order or diminished.

Now with regard to your question, for example, on the unit determination, presumably the Authority is going to be the place that we turn to determine unit questions. It might be necessary that further language go into this bill.

My own inclination would be to keep it as simple as possible so that we do not tie down in the law something that turns out to be an advantage to one particular group or another because you will never get it back out. All you then need is one group with veto power to keep you from correcting the error. But if we leave that within the range of determination by the board, as we do with the NLRB, it might be easier to guarantee that equity continues from time to time, as conditions change.

Would you agree with that?

Mr. WHITE. On the unit—I want to try to respond.

Mr. FORD. That is assuming that we let you try to pick the board. The finite question: You suggest that you would like to legislate more specifically how you resolve these unit consolidation areas.

Mr. WHITE. My suggestion is—and this is specific—that two or more units could only be consolidated by a vote of the employees in the units.

If someone really believes in a democratic procedure and in the actual participation of the people who work in a unit, it is difficult to see how they could raise, in my opinion and knowledge, how they could object to the employees voting as to whether they wish to continue in this unit.

In the first place, the Authority established that this was an appropriate unit when the union petitioned for an election in the first place.

The Authority, in doing its job, dealt with the mission of the agency, the efficiency of the operation, and whether or not it met the needs of the agency, and its function, and whether this was an appropriate unit in which to hold an election.

They all have been defined as appropriate units keeping with the needs of the Agency, and by the Authority, so my suggestion would be to be specific and to let the people vote on it because the managers

have already said that it meets our needs, and that is the point that we were trying to make. It would work to the advantage of a small union to have a vote.

If you want me to be specific, I can give you an example in Atlanta, Ga. We had a situation down there. You do have the color question in America. I do not know whether everybody is aware of that. We have exclusives down there.

About 3 of 4 years ago, when they changed the Executive order so that you had to win an exclusive in order to continue to have dues checkoff, which we had prior to that time under former recognition with 10 percent—everybody had to win an election in order to get dues checkoff.

So the Alliance petitioned for a unit which had about 150 people in it, in the Disease Center down there, and about 98 percent of them were black. Based on our experience, we felt that we had a good chance of continuing as their representative in an election.

Another union, which I shall not name, had a unit for formal recognition which had about 500 or so people, and they were 98-percent white. They petitioned for a unit which would include our 150.

We opposed it, and fortunately the Labor Department decided with us, and subsequent to the election, we won. So that is just one of the examples; and recognizing the realities of life and the hostilities that exist, we believe the people ought to get a chance to vote.

Mr. CLAY. You would have the same right to appeal to the Authority right now, that you had to appeal to Labor, under the present process.

Mr. WHITE. Mr. Chairman, we were going through a change in the Executive order, and in order for us to retain dues checkoff, we had to win an election in that unit to continue to be recognized as a unit.

Mr. CLAY. Yes, but the Authority was set—

Mr. WHITE. They did decide that it would continue.

Mr. FORD. Are you really opposed to the idea of letting the Authority—I have been saying the Board—establish the rules by which you determine appropriate—

Mr. WHITE. As I understood it, the Authority would decide what would be appropriate units in the first place, and once they had done this, the question we were raising here was why is the Authority going to consolidate several units when it had already approved them as being appropriate by different sizes?

It could work to the disadvantage of a union like this one. We do not want the unit changed which has been declared appropriate, and where we have won an election, and where we have negotiated a contract. We do not want a change unless we get a chance to vote on it.

Mr. CLAY. Would you like to send some proposed language?

Mr. WHITE. Yes, sir.

Mr. Ford, if you do not mind, Mr. Chairman, I would like to speak. I appreciate, possibly as much as anybody at this level of the alliance, the courage required for the chairman and some of the people with him, and I know his close relationship with you, and I know from observation over the years how strongly you feel about the right of labor to organize and represent people, and for the two of you who have sponsored two bills which were incompatible with each other in certain parts to come together and give us a product with

input that different unions had. That is something to be commended for. But at the same time, we have an obligation as spokesmen for the alliance. Mr. Clay is a friend, and he knows the problems that black people and women have. Those are some of the things which motivate him.

From time to time, in some discussions we talk about coexistence, and this is a real question as far as we are concerned. Why can't these big unions coexist with us? They forced us into existence in the first place. We did not want to be treated like black people in 1913 because you were treated differently all over America; but they forced us into existence. It is not too hot right now. In the labor movement in America today out of, roughly speaking, 90 million people who work for a living, only 17 million are organized.

The alliance stands ready, on a competitive basis, to organize the other 73 or so million into the labor movement.

We want to be a part of it. What my big brothers are trying to do is to eliminate somebody. We are willing to work with them to organize everybody in the Federal Government, which is 50 percent unorganized; let's organize all of them. Let's move together. But they do not want to do that.

These are some of the problems that we have. We do not feel that we can afford to merge because if we do, through the democratic procedure and a majority union, they are going to give me a chance to talk and then outvote me every time, and they will then tell me that the democratic procedure has worked. So we cannot afford to lose our identity; and in trying to answer Mr. Clay's question, we were clear on where he stood a long time ago, and we respect his position. We are not big enough or strong enough to do anything about it but express our views, but he is committed to the concept of an agency shop, and we are opposed to it, but we are not going to lose our friendship over it.

Mr. FORD. I do not understand your perception of the agency shop. It is not new, to have you express it—your concern about it. But do you think that is an important enough issue to stop this bill?

Mr. WHITE. Mr. Ford, I think, if you have so much opposition to enacting a law, that conceivably, you could drop certain controversial segments of the bill.

Mr. FORD. Are you advocating that we prohibit an agency shop even if it is negotiated?

Mr. WHITE. Our position was and has been, and was voted in convention, and whether we consider it right or wrong, that position has been that an employee in the Federal Government, and this is our experience, should not be required to pay in order to hold a job. The job should be based on the capacity to perform and to do a job, and if you had an organized thrust you could possibly sign up 98 percent of the people in an agency, with unions moving with enlightened action and really representing the people, and you could persuade them to join a union in the absence of a union shop which primarily requires you to pay in order to have a job.

Mr. Ford, on the question of the right to work people, we do not make any derogatory remarks about them. But anybody who knows about the history of this union would know that in our fight to achieve something we believe, for the benefit of the rank and file employees,

that is compatible with our concern with the blacks, the females, and others, regardless of what the right to work people's position may be on other issues.

That may be the only point in this spectrum where we seem to be in agreement. That may be the only one.

Again, I am not criticizing these people as to what they are trying to do, but we are fighting because of our fears, and you know what the climate is in America here today on all kinds of things, which have America almost split. What are you going to do about black people and females?

These other unions generally, from my experience, are not going to bring it up if we don't. They are not going to talk about it. They are not going to take action in too many cases.

Thank you, Mr. Chairman. Unless someone has questions, I will not ramble on. We would like to see a law placed on the books, in the wisdom of the committee. Possibly you could decide what issues you may delete from this bill which would enhance its chance of becoming a law during this session of Congress.

We are not suggesting what; we would like to see a bill passed, but, if I personally had to make a choice on union shop, or what is the most important thing for this union, if we had the undiluted right under any procedure to represent anybody who came to us for assistance—I mean undiluted, in any procedure that you have, that we could represent them—if we had that, in my opinion we could take care of everything else.

Mr. CLAY. Mr. Ford, do you have any more questions?

Mr. FORD. If we could legislate the good guys who happen to be incumbents into any given position at any given time, in perpetual existence, Bill and I would not be here because we would have been legislated out before we had the chance to get in.

You will remember the fight that we had trying to get a labor-management bill as a part of the postal reform, when we had some unions who were overly ambitious in trying to write the provisions so that they would qualify at the expense of others.

Mr. WHITE. Right.

Mr. FORD. We had the very clear-cut problem of an industrial-type union versus the crafts. We were able to resolve that, and the resolution of that conflict actually resulted in the amalgamation and consolidation of a number of organizations, and they have managed to survive without becoming a part of the large consolidated group.

You are not fearful that we could do the same sort of thing here, are you? I have heard from no one in labor the idea that they want to legislate your organization out of existence.

Mr. WHITE. What they did—before you were on the committee—Mr. Clay, you were here in 1970, were you not? Anyway, in 1970 you had a closed shop or union shop language coming out of each committee of the House and the Senate, to the floor.

On the Senate side it sailed through with no problem, but on the House side it was amended. The House language gave the employee the right to join or refrain from joining a union. The bill also included dues check off which we now have in the Postal Service by that bill. An employee in the Postal Service can join or not join a union. That means he can join an exclusive union. We have dues check off which we brought over from the Executive order.

What the exclusive unions did with the Postmaster General—and that is why we have a bill before your committee now, and the subcommittee of Mr. Wilson—they had negotiated something which said although you can join the Alliance because that is your right under the language of the law, you can have the Postmaster General take out your money and pay them—we have negotiated a contract which says that the managers cannot deal with them as your representative, and that is the paradox that we now have over there.

Perhaps this is why we are acting in some instances the way we do. It is a problem, and it is painful, and we have a bill right over there right now dealing with the right to choose a representative, and other people have said that this is union busting.

We tried to answer that in 1976. We amended the language to have it so that only the union which was in existence—which meant us and them which were exclusives—that you could only go to them to get a representative. You could not go anywhere else, and you would not have any proliferation.

Then they said this was special interest legislation. We find ourselves over here trying to reflect our experience, which we continue to have in the Postal Service, and certainly we are not in favor of union busting, and I am sincere. Filbey and I used to work together and go see the Postmaster together in Baltimore, and go anywhere else, but because we could not see our way clear to merge because we knew what the problem was with women and blacks, and we knew from experience that his union was not going to deal with this issue—it would not then—that they were a part of the problem because they just got through barring blacks from membership.

So these are the problems, if our language appears to be the language of a frustrated person. At least we know what our fears are. We do wish that this bill or a bill could be enacted requiring recognition by law instead of the Executive Order where Mr. Carter could wake up tomorrow morning and say it is out of existence.

Mr. CLAY. In relationship to that position just stated, do you agree with Mr. Vince Connery of the National Treasury Employees Union who attacks the alternate union concept and says that the idea of another group being able to intrude upon the exclusive recognition does violence to the basic principle and sets a dangerous precedent that would weaken the foundation of Federal labor relations programs, but despite his philosophic differences with these provisions, however, says he will not oppose the bill because it is that important to pass this piece of legislation?

Are you saying in effect that with some minor changes in the bill, and I do not mean major changes—I do not see us making any major changes in the bill—that it is so important to pass this legislation that you would go along with that?

Mr. WHITE. This is where I ought to be the president.

I would like to see the bill enacted in the area—I mean, you do have a pro rata system defined, and I do know, Mr. Chairman, and you are aware from my discussion with you and our other attorney and Al, which possibly had some influence on some changes that were made—I will have to talk with the president.

We are on record as to how we feel. No doubt we feel as strongly about union shops as that other president feels about alternate unions.

I would recommend to the president, Robert White, that we take a similar position to his. We have stated our position. The record shows how we feel about it.

If the bill goes through with these other protections, we have a meaningful vehicle for representing our members. I imagine it is almost inconceivable that you could give us the right to function under the negotiated procedure.

Mr. CLAY. I have no further questions.

Do you, Mr. Ford?

Mr. FORD. No.

Mr. CLAY. The meeting is adjourned.

[Whereupon, at 11:42 a.m., the hearing was adjourned, subject to the call of the Chair.]

[The statements which follow were received for the record:]

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

Farm Bureau is a voluntary nongovernmental organization of 2,676,259 member families in 49 states and Puerto Rico, representing farmers and ranchers who produce every agricultural commodity produced on a commercial basis in this country.

We see no need for the passage of legislation in the field of federal employee labor-management relations. The executive order on this subject issued by President Kennedy, and continued in effect by Presidents of both political parties, seems to be working reasonably well.

Federal employees are protected by the Civil Service Act. In our opinion they now have pay scales and employee benefits which exceed those offered in private employment.

Instead of considering legislation to give statutory recognition to exclusive representation by labor unions within various federal agencies, the Congress should enact legislation to penalize federal employees who engage in strikes or work slowdowns, particularly in such vital public services as air traffic control where public safety must be the uppermost consideration.

The bills being considered by this Committee propose either to set up a new federal employee relations act and administrative structure or to bring federal employees under the National Labor Relations Act. We oppose both approaches.

H.R. 13 would establish not only a new 3-member Federal Labor Relations Authority to administer labor-management relations in the area of federal employment but also a new Federal Service Impasses Panel and a new Federal Personnel Policy Board, all of which would drastically change current relationships, including procedures for wage determination.

This legislation would permit a federal agency to recognize a labor union or employee association as the exclusive bargaining agency for all of the employees of an agency, if a majority of them vote for such representation. It would permit such an agency to require all employees either to join the union or association and have their dues deducted from their paychecks or to pay a fee in an equal amount to the union or association.

We oppose any such arrangement as an agency shop in public employment. Public employment is a privilege, not a right. No person should be required to join any organization or pay any form of tribute for the privilege of holding a job in a federal agency.

We recommend that this legislation be rejected by the Subcommittee and ask that this statement be made a part of the hearing record.

NAVAL CIVILIAN ADMINISTRATORS ASSOCIATIONS,
OFFICE OF THE EXECUTIVE SECRETARY,
Haddonfield, N.J., September 20, 1977.

Hon. WILLIAM L. CLAY,
Chairman, Subcommittee on Civil Service, Committee on Post Office and Civil Service,
Cannon House Office Building, Washington, D.C.

DEAR MR. CLAY. This is in response to your letter dated September 12, 1977 with which you forwarded a copy of the Subcommittee Print of the proposed labor-management legislation for federal employees, and in which you invited additional testimony for inclusion in the printed record of the hearings.

The Naval Civilian Administrators Association appreciates the opportunity to express opinions on the proposed legislation, which, if it became law, might well have the most profound impact on the federal civil service since the beginning of the merit system many decades ago.

On April 26, 1977 I presented a statement before your subcommittee with regard to H.R. 13, H.R. 1589, H.R. 649 and H.R. 163. At the present time, this Association stands firmly behind the views expressed in that statement and also the answers given to the questions asked of me at the time of the hearings. Therefore, we desire that the original statement be made part of the record. The only correction required is to identify the present President of this Association as Mr. Henry W. Theiling of the Charleston Naval Shipyard, Charleston, South Carolina; and the Vice President as Mr. William Anderson of the Naval Ship Engineering Center, Philadelphia, Pa. A copy of the original statement is enclosed.

We note that the Subcommittee Print in section 7102(a) states that employees "... shall have the right to join or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercising of such right." Yet, under 7116(c) we find that "If an exclusive representative has been recognized in an appropriate collective-bargaining unit, each employee in such unit who is not a member of the recognized organization shall be required as a condition of continued employment to pay to such organization for the period that it is the exclusive representative an amount equal to the dues, that a member is charged."

We believe that the agency shop concept of 7116(c) completely voids the employee "freedom of choice" set forth in 7102(a); even with the proviso for conscientious objectors (section 7102(b)) to contribute to charitable funds. Moreover, as noted in our original testimony, we are opposed to any right to strike, and again note that 7117(b) (7) prohibits "... an illegal strike ...", but does really cover the subject; that is, could there be such a thing as a legal strike?

We also note that in the original H.R. 13 under 7103(a)(iv) employees of the Tennessee Valley Authority were excluded; and in the new print employees of the United States Postal Service are also excluded. It seems reasonable to presume that the postal unions are not happy with the proposed legislation and therefore have convinced your Subcommittee to exclude them.

In summary, we are opposed to the legislation as proposed for the following reasons:

1. We oppose the concept of an employee being required to join or pay tribute to a labor organization as a condition of employment.
2. We oppose any possibility of the right to strike by any employee of the federal government.

Thank you for the invitation to comment and we request that this letter, as well as our original testimony be made a part of the record.

Very respectfully,

J. HARTLEY BOWEN, Jr.,
Executive Secretary.

NATIONAL RIGHT TO WORK COMMITTEE,
September 23, 1977.

Hon. WILLIAM L. CLAY,
Chairman, Civil Service Subcommittee of the Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN: Thank you for allowing us an opportunity to comment on the Subcommittee mark-up on HR 13 and HR 1589—now HR 9094.

Last Spring, in testimony to your Civil Service Subcommittee, I stated that the National Right to Work Committee opposed HR 13 and HR 1589. You will recall the basis for our opposition was that they would have opened the door to compulsory unionism for millions of federal employees, without regard for either employee wishes or for the best interests of the American people.

From this same standpoint, we oppose HR 9094, the compromise version of HR 13 and HR 1589. Although HR 9094 differs in several respects from its predecessors, the bill still contains the same compulsory unionism provisions which prompted our original opposition.

Specifically, HR 9094 would force federal employees to accept the "services" of a labor union as exclusive representative whether those employees want that representation or not.

Moreover, through the agency shop provisions of HR 9094, federal employees who do not choose to join the union could be required to pay the full equivalent of union dues anyway, as a condition of employment.

Since the basis for our opposition to HR 9094 is the same as in the case of HR 13 and HR 1589, I request that you include our statement on those two bills in the record regarding HR 9094, with this letter as a supplement.

We wish the record to show also that, as advocates of the principles of voluntarism, we applaud the intent of the religious conscience clause in HR 9094. It recognizes that a serious moral and constitutional injustice exists when individuals are forced—with the sanction of their government—to support private organizations whose policies are incompatible with their religious beliefs. It disregards, however, a much broader constitutional question: may a free citizen be compelled to support an unwanted labor organization whether his or her objection is, or is not, related to religious beliefs?

Thank you for your attention and consideration.

Sincerely,

A. E. HARE,
Vice President, Legislation.

CONGRESSIONAL RESEARCH EMPLOYEES ASSOCIATION,
Washington, D.C., September 29, 1977.

Hon. WILLIAM CLAY,
Chairman, Subcommittee on Civil Service, Cannon House Office Building, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Congressional Research Employees Association (CREA), I would like to express our support for H.R. 9094, the Federal Service Labor-Management Act of 1977.

As you know, CREA is the unaffiliated certified exclusive bargaining representative for the approximately 600 eligible employees in the Congressional Research Service (CRS), Library of Congress. In October of 1975, the labor-management program at the Library of Congress began when Library of Congress Regulation LCR 2026, the Library's own regulation somewhat comparable to Executive Order 11491, went into effect.

Prior to LCR 2026, the Library of Congress had no labor relations program. It is no secret that the program grew out of the recognized need by the Library. to improve labor-management relations following a lengthy and troublesome sit-in demonstration of employees in the main reading room of the Library in the early 1970's.

In large measure, the program was conceived as a means to provide better employee grievance procedures and to improve Library personnel management. The Librarian of Congress has broad independent statutory authority under Title 2 United States Code Section 136 to adopt regulations governing Library employees who are not Civil Service employees.

Following the announcement of the institution of the Library's labor program under LCR 2026, CREA was established from inside CRS in order to be responsive to the particular needs of CRS employees and to aid in the accomplishment of the mission of the Congressional Research Service and the United States Congress.

CREA regards itself to be unique among Federal-sector labor organizations. The employees of the Congressional Research Service who are represented by CREA comprise a highly-skilled professional and production staff who provide a variety of important research functions for the United States Congress pursuant to the CRS mandate set forth in Public Law 91-510, the Legislative Reorganization Act of 1970.

The high degree of voluntary participation of CRS employees in CREA has demonstrated strong support for our goals and objectives. CREA has consistently maintained a membership of over 60 percent of all eligible CRS employees.

CREA has been and is currently engaged in formal contract negotiations with Library management for the purpose of completing the first collective bargaining agreement at the Library of Congress. Our hope is that our first agreement will finally provide the kind of solid foundation for Library labor-management relations which has long existed in other Federal agencies under Executive Order 11491.

Under the Library program, there is established the office of labor-management Umpire. The role of the Umpire is somewhat analogous to the role of the Federal Labor Relations Council in the Federal sector. The Umpire is supposed to be an independent third party mutually agreed upon who adjudicates unfair labor practice charges, resolves contract impasse disputes and generally administers the program.

Although many of our efforts have been successful, we have found serious deficiencies in the Library's program. Most recently, a severe blow was dealt to the program when the Library repealed that portion of the regulation requiring agreement between management and labor organizations on Umpire selection. By providing that management may unilaterally designate an Umpire without labor organization approval under certain circumstances, the Library has removed a substantial attribute of its program and has retreated from its commitment to genuine third party resolution of differences.

We believe that this deficiency and others could easily be remedied with the enactment of a statutory labor-management program applicable to the Library of Congress. In the past the special status of the Library of Congress has resulted in Library employees being excluded from important benefits accorded to other Federal employees.

We are pleased to note the express application of H.R. 9094 to the Library of Congress through the definition of agency in Section 7103(a)(3).

We believe that H.R. 9094 would provide a substantial improvement over our present governing authority, Library of Congress Regulation LCR 2026. For these reasons, we strongly support the enactment of H.R. 9094.

We would greatly appreciate it if this letter could be made a part of your official hearing record on H.R. 9094.

Sincerely,

PATRICK J. HUNT, *President.*

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