LABOR LAW REFORM ACT OF 1978

HEARING

BEFORE THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 8410

TO AMEND THE NATIONAL LABOR RELATIONS ACT TO STRENGTHEN THE REMEDIES AND EXPEDITE THE PROCEDURES UNDER SUCH ACT AND RELATED BILLS

JUNE 29, 1978

Printed for the use of the Committee on Human Resources

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LABOR LAW REFORM ACT OF 1978

THURSDAY, JUNE 29, 1978

U.S. SENATE,
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:32 a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Riegle, Schweiker, Pell, Chafee, and Hatch.

OPENING STATEMENT OF SENATOR WILLIAMS

The CHAIRMAN. We will come to order.

I would like to open this hearing with a few introductory words.

Late last Thursday the Senate agreed to recommit H.R. 8410 to this committee. The purpose of this action was to permit the Committee on Human Resources to evaluate the previously expressed concerns of Senators and to develop a bill which would accommodate those concerns while maintaining the basic objectives of labor law reform.

The hearings being held today are viewed as an important part of that process. Their purpose is to provide a forum for Senators to express their concerns, and to serve as the foundation for our committee to reconsider the labor law reform bill. They are a specific response to a concern of the distinguished minority leader, who, at the time of the recommittal motion stated:

> It is within the contemplation of the majority leader, as I understand it, that during this time the Members of the Senate would have an opportunity to appear before th jurisdictional committee to express their views, to make proposals and recommendations. Is it in the contemplation of the majority leader that there would be hearings or rather just consultation?

The response was that this was exactly what we had in mind. I stated:

> I would hope, however, that we could give an opportunity for those viewpoints to be expressed in a different forum before our committee and that would be my hope and objective—that we could work that out so that these ideas expressed here in general debate could be more specifically addressed before our committee. We would work toward that objective.

The minority leader agreed that this was the appropriate course, and said, "I must say, Mr. President, that I am pleased the majority leader made this request, and I find it appealing."

Therefore, last Friday, I wrote to my colleagues inviting each of them to appear before our committee to present their views.

Only Senators Lugar, Melcher and Hatch responded. One or two others had wanted to, but because of a conflict of floor action could not come over today.

I am disappointed that more did not avail themselves of this opportunity.

Nevertheless, it is our intention, and I am sure the intention of the other members of this committee, to carefully evaluate the testimony which we will hear today.

Since consideration of this legislation began almost one year ago, I have repeatedly expressed the view that we need not adopt any particular method or procedure for solving the problems which have developed with respect to the administration of the National Labor Relations Act. Our purpose has been to determine the extent to which employees are denied their right to a prompt and effective resolution of representation disputes and unfair labor practice cases and to fashion a bill which corrects these problems. In my judgment, and in the judgment of the overwhelming majority of our committee, the weight of the evidence supports the conclusion that steps must be taken to insure that employees are able to make a free choice on the issue of union representation without fear of coercion. Keeping this general purpose in mind, first in committee and then during the floor debate, we have made revisions designed to make the bill fairer and more evenhanded. And we are prepared to go further if, in so doing, we can quell the irrational fears which this bill has engendered.

There is an unfortunate tendency during the course of a legislative battle of this magnitude for attention to focus on the political aspects of the struggle, the parliamentary tactics of the opposing sides and the relative strength or weakness of the groups most directly involved in the debate, rather than on the substantive provisions of the bill. It is my hope that at this stage of our deliberations we can focus on substance, rather than continuing to concern ourselves with the strength of the lobbying effort being made by the business community or by organized labor.

For in the last analysis our concern is not the relative interests of business or labor, but the rights of working men and women. If we can keep this in mind, I am convinced we can reach agreement on a bill that will be both effective and fair.

It is with this spirit that I open today's hearing.

First, however, we will insert in the record the texts of H.R. 8410, its principal amendment (Amdt. No. 2445), and S. 2467, as it was reported out of this committee.

[The texts of H.R. 8410, Amdt. No. 2445, and S. 2467 follow:]

95TH CONGRESS
1ST SESSION

H. R. 8410

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, OCTOBER 6), 1977
Read twice and referred to the Committee on Human Resources

AN ACT

To amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Labor Reform Act of 1977".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Labor Relations Act.

SEC. 2. (a) Section 3(a) of the National Labor Relations Act is amended to read as follows:

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor-Management Relations Act, 1947, and by the Labor Reform Act of 1977, is hereby continued as an agency of the United States, except that the Board shall consist of seven instead of five members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of six years. Their successors, and the successors of the other members, shall be appointed for terms of seven years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom that individual shall succeed. The President shall designate one member to serve as Chairman of the Board. No more than a simple majority of the members of the Board shall be members of the same political party. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.".

(b) (1) The third sentence of section 3 (b) is amended by striking "three" and substituting "four".

(2) Section 3 (b) is further amended by inserting after the third sentence the following new sentence: "The Board shall within ninety days after the date of enactment of the

Labor Reform Act of 1977 establish a procedure, upon conditions stated in the rule, pursuant to which a group designated pursuant to the first sentence of this subsection may, in appropriate cases, upon motion of the prevailing party in a decision of an administrative law judge after a hearing under section 10(b), summarily affirm such decision. A motion for summary affirmance shall be filed within ten days after the decision of the administrative law judge, any response shall be filed within twenty days thereafter, and the motion and response shall then be presented for decision to a group designated pursuant to the first sentence of this subsection.".

SEC. 3. Section 6 is amended to read as follows:

"SEC. 6. (a) The Board is authorized to make, amend, and rescind (in the manner prescribed by subchapter II of chapter 5 of title 5, United States Code) such rules and regulations as may be necessary to carry out the provisions of this Act.

"(b) (1) The Board shall within twelve months after the date of enactment of the Labor Reform Act of 1977 issue regulations to implement the provisions of section 9(c) (6) including rules—

"(A) which shall, subject to reasonable conditions, including due regard for the needs of the employer to maintain the continuity of production, provide that if an employer or employer representative addresses the em-

ployees on its premises or during working time on issues relating to representation by a labor organization during a period of time that employees are seeking representation by a labor organization, the employees shall be assured an equal opportunity to obtain in an equivalent manner information concerning such issues from such labor organization, and, with due regard for the rights declared in section 7, the right of such labor organizations to conduct meetings without undue interference, and the right of the employees to the privacy of their homes, provide also that the employees are assured an equal opportunity overall to obtain such information from the employer and such labor organization: *Provided*, That the rule shall apply to elections conducted pursuant to sections 9(c)(1) and 9(e);

"(B) to facilitate agreements concerning the eligibility of voters; and

"(C) to govern the holding of elections in cases in which an appeal has not been decided prior to the date of the election.

"(2) The Board shall, to the fullest extent practicable, exercise its authority under subsection (a) of this section to promulgate rules declaring certain units to be appropriate for the purposes of collective bargaining.

"(3) A rule or regulation issued by the Board with

respect to the subject matter set forth in paragraph (1) or (2) of this subsection shall be judicially reviewable only in a proceeding under section 10 of this Act and only on the grounds that the Board prejudicially violated the requirements of subchapter II of chapter 5 of title 5, United States Code, or that a rule or regulation of the Board is arbitrary or capricious, contrary to a specific prohibition of this Act, or of the Constitution. The failure of the Board to comply with the time requirements set forth in paragraph (1) of this subsection, or to institute a rulemaking proceeding with respect to the subject matter set forth in paragraph (2) of this subsection, within a reasonable period of time after a request for such a rulemaking procedure has been filed with the Board pursuant to section 553 (e) of title 5, United States Code, to complete such a procedure within a reasonable period after its institution, may be reviewed upon the petition of any aggrieved party in the court of appeals of the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit. The court of appeals shall have jurisdiction to grant appropriate relief.

"(4) (a) Notwithstanding any other provision of this Act, simultaneously with promulgation or repromulgation of any rule or regulation, the National Labor Relations Board promulgating or repromulgating the rule or regulation shall

transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in paragraph (2), the rule or regulation shall not become effective, if—

"(1) within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule or regulation promulgated by the National Labor Relations Board dealing with the matter of , which rule or regulation was transmitted to Congress on ,' the blank spaces therein being appropriately filled; or

"(2) within sixty calendar days of continuous session of Congress after the date of promulgation, one House of Congress adopts such a concurrent resolution and transmits such resolution to the other House, and such resolution is not disapproved by such other House within thirty calendar days of continuous session of Congress after such transmittal.

"(b) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a rule or regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the rule or regulation,

and neither House has adopted such a resolution, the rule or regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the rule or regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided in paragraph (1) (A).

"(c) Congressional inaction on, or rejection of, a resolution of disapproval under this subsection shall not be deemed an expression of approval of the rule involved.

"(C) For the purposes of subparagraphs (A) and (B) of this paragraph—

"(i) continuity of session is broken only by an adjournment of Congress sine die; and

"(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of thirty, sixty, and ninety calendar days of continuous session of Congress.".

SEC. 4. Section 9 (b) (3) is amended by striking ", or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." and substituting "nonguard employees of the same employer at the same location, or if such organization is directly affiliated

with any national or international labor organization which represents nonguard employees of the same employer at the same location".

SEC. 5. Section 9(c) is amended by adding at the end thereof the following new paragraph:

"(6) (A) Notwithstanding any other provisions of section 9, whenever a petition shall have been filed and served on the employer, or a labor organization pursuant to subsection (C) (1) (A) or (c) (1) of this section 9, or the individual or the labor organization that is the representative defined in subsection (a) of this section, in accordance with such regulations as may be prescribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf alleging that their employer declines to recognize their representative as the representative defined in subsection (a) in a unit appropriate for the purposes of collective bargaining under a rule established by the Board pursuant to section 6 or a decision in the applicable industry, that a majority of the employees in that unit have designated that individual or labor organization as their representative defined in subsection (a), and that no individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the bargaining unit defined in the petition, or that a majority of employees in a unit currently cer-

tified or recognized designate that they no longer desire representation, or that a majority of the employees covered by an agreement made pursuant to section 8 (a) (3) designate that such authority be rescinded, the Board shall investigate such petition. If the Board finds that the unit there specified is a unit covered by an agreement pursuant to section 8 (a) (3), or is a unit where the certified or currently recognized representative is no longer desired, or is a unit appropriate for the purposes of collective bargaining under a rule established by the Board pursuant to section 6 or a decision in the applicable industry, and if the Board has reasonable cause to believe that a question of representation affecting commerce exists and that the other conditions specified in this subsection have been met, the Board shall within seventeen days after the filing and serving of the petition direct an election by secret ballot not more than twenty-five days after a petition is filed and served under this subparagraph and shall so notify the representative named in the petition and the employer. (ii) Asserting that a majority of the employees in a unit appropriate for the purposes of collective bargaining do not wish to be represented by the individual or labor organization which has been certified or is being currently recognized by their employer as the representative defined in subsection (a), or do not wish to be covered by an agreement between their employer and a labor organiza-

tion made pursuant to subsection (a) (3) of section 8, the Board shall investigate such petition. If the Board has reasonable cause to believe that a question of representation affecting commerce, or a question covering an agreement made pursuant to subsection (a) (3) of section 8, exists and that the other conditions specified in this subsection have been met, the Board shall within seventeen days after the filing and serving of the petition direct an election by secret ballot which shall take place within eight days after such election is directed by the Board, and in no event more than twenty-five days after a petition is filed and served under this subparagraph, and the Board shall so notify the representative named in the petition and the employer.

"(B) In any proceeding under this subsection in which the Board directs an election by secret ballot, and which is not governed by subparagraph (A) of this paragraph, the Board shall direct the election on a date not more than fifty days after the filing and serving of the petition and shall inform the representative named in the petition, the employer, and all other interested parties of the election date not less than fifteen days prior to the election except that, where the Board determines that the proceeding presents issues of exceptional novelty or complexity, the Board may direct the election on a date not more than seventy-five days after the filing and serving of said petition. In computing the time

limits stated in this paragraph the days of the week during which a majority of the employees involved in the election are on vacation shall not be included.

"(C) After an election conducted pursuant to subparagraph (A) or (B) of this paragraph is completed, the Board shall, unless under a rule adopted pursuant to subsection (b) (1) (D) of section 6, the ballots have been impounded, promptly serve the parties with a tally of the ballots.

"(D) (i) Any party to the election conducted pursuant to subparagraphs (A) and (B) of this paragraph may, within five days after such election, object to the election on the ground that conduct contrary to a rule relating to election declared by the Board pursuant to its authority under section 6 or conduct contrary to a rule of decision declared by the Board in a proceeding under section 10 did affect the result of the election.

"(ii) With regard to challenged ballots, the Board shall, where such ballots are sufficient in number to affect the outcome of the election, investigate the challenges and serve a report upon the parties on challenges: *Provided*, That nothing contained herein shall preclude resolution of the eligibility questions raised by such challenges in a subsequent unit clarification proceeding.

"(iii) The Board shall move expeditiously to resolve

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any issues raised by the objections or regarding eligibility and to certify the results of the election: *Provided,* That an objection that an election was conducted under subparagraph (A) instead of subparagraph (B) shall not be a basis for setting the election aside.".

SEC. 6. Section 9 (d) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that no such certification shall be set aside unless the Board in issuing such certification prejudicially violated the procedural requirements of this Act or of subchapter II of chapter 5, United States Code, or acted arbitrarily or capriciously, or contrary to a specific prohibition of this Act or of the Constitution, or made findings with respect to questions of fact which are not supported by substantial evidence on the record considered as a whole.".

SEC. 7. The first sentence of subsection (10) (b) is amended to read as follows:

"(b) Whenever—

"(1) it is charged that any person has engaged in or is engaging in any such unfair labor practice, or

"(2) it is charged that any person has engaged in or is engaging in a willful violation of—

"(A) any final order of the Board entered pursuant to subsection (c) of this section and which

is not and has not been the subject of a proceeding under subsection (e) or (f) of this section, or

"(B) any final order of a court of appeals of the United States entered in a proceeding under subsection (e) or (f) of this section, prohibiting interference with, restraint or coercion of employees in the exercise of the rights guaranteed in section 7 or discrimination against employees to encourage or discourage membership in a labor organization,

and that said violation occurred within three years of the entry of the order violated,

the Board, or any agent or agency designated by the Board for such purposes, is authorized to issue and cause to be served upon such person a complaint stating the charges. Such complaint shall contain a notice of hearing before the Board or member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of such complaint. No complaint shall be issued based upon any unfair labor practice or willful violation of a final order occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces,

in which event the six-month period shall be computed from the day of his discharge.".

SEC. 8. Section 10 (c) is amended by—

(1) inserting "(1)" after "(e)";

(2) striking out the fifth sentence of paragraph (1) (as redesignated by this section) and inserting in lieu thereof the following: "If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, or has willfully violated or is willfully violating a final order as specified in subsection (b) of this section, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.";

(3) by adding at the end thereof the following new paragraphs:

"(2) If upon the preponderance of testimony taken the Board shall be of the opinion that the allegation in the complaint that a person has willfully violated or is willfully violating a final order as specified in subsection (b) of this section has been sustained, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order certifying the identification of that person to the Secretary of Labor. Notwithstanding any other law, unless the Secretary of Labor determines that because of unusual

circumstances the national interest requires otherwise, the Secretary shall certify the identity of such person to the Comptroller General. The Comptroller General shall distribute a list to all agencies of the United States containing the names of persons certified by the Secretary of Labor pursuant to this subsection. Unless the agency of the United States concerned, after notice and opportunity for hearing to all interested parties, certifies to the Secretary of Labor that there is no other source of material or services furnished by the person affected by the Board order, no contracts shall be awarded to such person for a reasonable, definitely stated period of time commensurate with the seriousness of the violation, as determined by the Secretary of Labor, but such period shall not exceed three years. A debarment may be removed or the period may be reduced by the Secretary of Labor upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief, including without limitation compliance with the final order found to have been willfully violated, bona fide change of ownership or management, a fraud or misrepresentation of the charging party: *Provided*, That this subparagraph shall restrict the award of contracts solely to the products or service performed at the particular facility or facilities where the willful violation occurs or of the business entity legally responsible for the willful violation or to the

local, intermediate, national or international labor organization legally responsible for the willful violation.

"(3) In a case in which the Board determines that any person has engaged in an unfair labor practice within the meaning of subsection (a) (1), (a) (3), (b) (1), or (b) (2) of section 8 which deprives an employee of employment while employees in a bargaining unit which includes that employee are seeking representation by a labor organganization or during the period after a labor organization has first been recognized as a representative defined in subsection (a) of section 9 in such unit until the first collective-bargaining contract is entered into between the employer and the representative, the measure of backpay for the period until a valid offer of reinstatement is made shall be double the employee's wage rate at the time of the unfair labor practice less the wages the employee has earned during that period. In a case in which the Board determines that an unlawful refusal to bargain prior to the entry into the first collective-bargaining contract between the employer and the representative selected or designated by a majority of the employees in the bargaining unit has taken place, the Board may award to the employees in that unit compensation for the delay in bargaining caused by the unfair labor practice which shall be measured by the difference between (i) the wages and other benefits received by such employees

during the period of delay, and (ii) the wages and fringe benefits such employees were receiving at the time of the unfair labor practice multiplied by the percentage change in wages and other benefits stated in the Bureau of Labor Statistics' average wage and benefit settlements, quarterly report of major collective-bargaining settlements, for the quarter in which the delay began. If the Secretary of Labor certifies to the Board that the Bureau has, subsequent to the effective date of the Labor Reform Act of 1977, instituted regular issuance of a statistical compilation of bargaining settlements which the Secretary determines would better effectuate the purposes of this subsection than the compilation specified herein, the Board shall, in administering this subsection, use the compilation certified by the Secretary.".

SEC. 9. (a) The third sentence of subsection 10(c) is amended by inserting immediately before the period at the end thereof a comma and the following: "nor shall any objection be considered by the court unless a petition for review pursuant to subsection (f) of this section has been timely filed by the party stating the objection".

(b) The fourth sentence of section 10(c) is amended to read as follows: "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive: *Provided*, That no finding of the Board that a representative is

the exclusive representative of the employees in a unit for purposes of collective bargaining shall be accepted by the court unless such representative has been certified by the Board after a secret ballot election conducted in accordance with subsection (c) of section 9 or has been determined to be a representative defined in subsection (a) of section 9 by the Board in an order entered pursuant to subsection (c) of this section: *Provided further*, That no such order shall be entered where the employer has not engaged in conduct, unlawful under this Act, which undermines a free and fair election under subsection (c) of section 9: *Provided further*, That any representative designated or selected prior to the effective date of this Act shall remain such representative under this provision unless such designation or selection is withdrawn by the employees in the unit appropriate for the purposes of collective bargaining in an election under subsection (c) of section 9: *Provided further*, That where the employer agrees to recognize an individual or labor organization as a representative defined in subsection (a) of section 9 on the basis of proof of majority support other than a Board certification and such support is in fact demonstrated, the individual or labor organization so chosen shall be considered to be a representative for purposes of subsection (a) of section 9.

(c) The first sentence of subsection 10 (f) is amended by—

(1) inserting "within thirty days" after "by filing", and

(2) inserting before the period at the end thereof the following: "except that, if a petition for review has been timely filed, any other party to that Board proceeding, aggrieved by the order, may, within fifteen days of service on it of said petition, file a further petition for review".

SEC. 10. The first sentence of section 10 (l) is amended to read as follows:

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of—

"(1) subsection (a) (3) or (b) (2) of section 8 which deprives an employee of employment while employees in a bargaining unit which includes that employees are seeking representation by a labor organization or during the period after a labor organization has first been recognized as a representative defined in subsection (a) of section 9 in such unit until the first collective-bargaining contract is entered into between the employer and the representative, or

"(2) subsection 4 (A), (B), or (C) of section 8(b) or section 8(e) or section 8(b) (7),

the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.".

SEC. 11. Section 10(m) is amended by inserting "under circumstances not subject to section 10(l)," after "section 8,".

SEC. 12. Section 10 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:

"(n) Where there exists an agreement between an employer and a labor organization, whether express or implied, not to strike, picket or lockout, the Board, if it finds that the public interest would be served thereby, shall have the power to petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where either or both of the parties reside or transact business, for such temporary injunctive relief or restraining order as is necessary to prevent any person not authorized by a representative of employees of the employer being struck or picketed within the meaning of subsection (a) of section 9 from engaging in, or inducing or encouraging any employee of the employer to engage

in, conduct in breach of such agreement, irrespective of the nature of the dispute underlying such strike, picket or lockout, and such court shall have jurisdiction to grant to such party or the Board such temporary injunctive relief or restraining order as it deems just and proper.".

SEC. 13. Except as otherwise specifically provided in this Act, the amendments made by this Act shall take effect sixty days after the date of enactment of this Act.

Passed the House of Representatives October 6, 1977.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

Purpose: **Calendar No. 709**

To expedite procedures under the National Labor Relations Act.

Amdt. No. 2445

95TH CONGRESS
2D SESSION

H. R. 8410

IN THE SENATE OF THE UNITED STATES

JUNE 8 (legislative day, MAY 17), 1978
Ordered to be printed

AMENDMENT
(IN THE NATURE OF A SUBSTITUTE)

Proposed by Mr. ROBERT C. BYRD (for himself, Mr. WILLIAMS, Mr. JAVITS, Mr. FORD, Mr. DURKIN, Mr. MCINTYRE, Mr. SPARKMAN, Mr. STAFFORD, Mr. HUDDLESTON, Mr. BAYH, Mr. BURDICK, Mr. ABOUREZK, Mr. CLARK, Mr. EAGLETON, Mr. MELCHER, Mr. METZENBAUM, Mr. MOYNIHAN, Mr. RANDOLPH, Mr. RIEGLE, Mr. NELSON, Mr. SASSER, Mr. CASE, and Mr. PACKWOOD) to H.R. 8410, an Act to amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such Act, viz: strike all after the enacting clause and, insert the following:

That (a) this Act may be cited as the "Labor Law Reform Act of 1978".

(b) Except as otherwise specifically provided, whenever

in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Labor Relations Act.

SEC. 2. (a) Section 3 (a) of the National Labor Relations Act is amended to read as follows:

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor-Management Relations Act, 1947, and by the Labor Law Reform Act of 1978, is hereby continued as an agency of the United States, except that the Board shall consist of seven instead of five members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of six years. Their successors, and the successors of the other members, shall be appointed for terms of seven years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom that individual shall succeed. The President shall designate one member to serve as Chairman of the Board. No more than a simple majority of the members of the Board shall be members of the same political party. Any member of the Board may be removed by the President,

upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.".

(b) (1) The third sentence of section 3 (b) is amended by striking "three" and substituting "four".

(2) Section 3 (b) is further amended by inserting after the third sentence the following new sentence: "The Board shall within ninety days after the date of enactment of the Labor Law Reform Act of 1978 establish a procedure, upon conditions stated in the rule, pursuant to which a group specifically designated pursuant to the first sentence of this subsection to decide summary judgment cases may, where appropriate upon the motion of a prevailing party in a decision of an Administrative Law Judge issued after a hearing under subsection (b) of section 10, summarily affirm such decision. A motion for summary affirmance shall be filed within ten days after the decision of the Administrative Law Judge, any exceptions to that decision and any response to that motion shall be filed within twenty days thereafter, and the motion and response shall then be presented for decision.".

SEC. 3. The second and third sentences of section 4 (a) are amended to read as follows: "The Board shall appoint an executive secretary, and such attorneys, examiners, law clerks to Administrative Law Judges, and regional directors,

and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member, and any law clerk assigned to an Administrative Law Judge may for such judge, review such transcripts and prepare such drafts.".

SEC. 4. Section 6 is amended to read as follows:

"SEC. 6. (a) The Board is authorized to make, amend, and rescind (in the manner prescribed by subchapter II of chapter 5 of title 5, United States Code) such rules and regulations as may be necessary to carry out the provisions of this Act.

"(b) (1) The Board shall within twelve months after the date of enactment of the Labor Law Reform Act of 1978 issue regulations to implement the provisions of section 9 including rules—

"(A) which shall provide that after a notification under subsection 9(c) (6) (A) has been served and until an election under section 9 has been held, or the notification has expired, if an employer or agent of the employer addresses the employees at the work site or during working time on issues relating to representa-

tion by a labor organization the employees shall be assured an equal opportunity to obtain in an equivalent manner information concerning such issues from such labor organization, and such rule shall (i) not grant the opportunity to obtain information from a labor organization provided herein during working time; (ii) limit that opportunity to nonworking areas including but not limited to parking lots, cafeterias, and other areas where employees are allowed to congregate during changes of shift, breaks, mealtime, or other nonwork time except restrooms an other locations not suitable for the exchange of views; (iii) limit the number of nonemployee labor organization representatives at each such area to a maximum of two except that with regard to parking lots the maximum shall be four; (iv) require the labor organization to provide at least one day's advance notice of a request to address the employees and that said notification shall specify the areas to be used and shall state the names of the organization's nonemployee representatives and the time during which they will be present; and protect the employer's interest in uninterrupted operation and in discipline and the employees' right to engage in activity protected by section 7 free of interference, restraint, and coercion: *Provided,* That the provisions of such rule shall not apply

to an employer who compensates fewer than ten individuals;

"(B) to facilitate the resolution of disputes concerning the eligibility of voters; and

"(C) to govern the holding of elections in cases in which an appeal has not been decided prior to the date of the election.

"(2) The Board shall, to the fullest extent practicable, exercise its authority under subsection (a) of this section to promulgate rules declaring certain units to be appropriate for the purposes of collective bargaining.

"(3) A rule or regulation issued by the Board with respect to the subject matter set forth in paragraph (1) or (2) of this subsection shall be judicially reviewable in accordance with the provisions of section 706(2) (A) through (D) of title 5, United States Code, only in a proceeding under section 10 of this Act. The failure of the Board to comply with the time requirements set forth in paragraph (1) of this subsection, or to institute a rulemaking proceeding with respect to the subject matter set forth in paragraph (2) of this subsection, within a reasonable period of time after a request for such a rulemaking procedure has been filed with the Board pursuant to section 553(e) of title 5, United States Code, to complete such a procedure within a reasonable period after its institution, may be reviewed upon the

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petition of any aggrieved party in the court of appeals of the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit. The court of appeals shall have jurisdiction to grant appropriate relief.".

SEC. 5. Section 9(b)(3) is amended by striking out "such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards" and inserting in lieu thereof by a hyphen and the following:

"(A) in the case of a unit involving guards regularly assigned to work on the premises of two or more employers (whether or not individual guards move between the premises of such employers), such organization admits to membership, or is affiliated, directly or indirectly, with an organization which admits to membership, employees other than guards, and

"(B) in any other case, such organization admits to membership nonguard employees at the same location, or if such organization is directly affiliated with any national or international labor organization which represents nonguard employees at the same location".

SEC. 6. Section 9(c) is amended by adding at the end thereof the following new paragraph:

"(6)(A) In directing an election by secret ballot, the

Board shall set the election on the earliest administratively feasible date but not less than thirty-five days after the employer involved has been notified in writing that the employees in that unit are seeking representation by the labor organization involved, or that the employer and labor organization have been notified that the employees do not wish to be represented by the individual or labor organization which has been certified or is being currently recognized by their employer as the representative defined in subsection (a), or do not wish to be covered by an agreement between their employer and a labor organization made pursuant to the first proviso to subsection (a) (3) of section 8, and not more than fifty days after the filing and serving of the petition (unless another date prior to such thirty-fifth day is agreed to by the employer and the representative named in the petition), except that where the Board determines that the proceeding presents issues of exceptional novelty or complexity, the Board may direct the election on a date not more than seventy-five days after the filing and serving of said petition. In computing the time limits stated in this subsection the days of the week during which a majority of the employees involved in the election are on vacation shall not be included. To be effective for purposes of this subsection, notification other than a petition must specify the unit stated in the petition and must be served no more than six months before

the filing and serving of the petition. If a notification other than a petition is served as provided in this subsection and a petition is not filed within the six-month period specified above, a second notification by the same person including a petition filed during the succeeding two months shall be of no force or effect.

"(B) Notwithstanding any other provisions of section 9 the following provisions of this subparagraph apply:

"(i) The Board, in processing petitions, shall grant first priority to petitions supported by a majority of the employees in a unit appropriate for the purposes of collective bargaining involved in which no individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees and to petitions under subsection (e) supported by a majority of the employees in the unit involved.

"(ii) Where the unit specified in the petition is a unit appropriate for the purposes of collective bargaining under a rule established pursuant to section 6, the Board shall direct an election without regard to the provisions of paragraph (1) of this subsection with respect to a hearing prior to such election.

"(C) After an election conducted pursuant to subparagraph (A) or (B) of this paragraph is completed, the Board shall, unless under a rule adopted pursuant to sub-

section (b) (1) (C) of section 6, the ballots have been impounded, promptly serve the parties with a tally of the ballots.

"(D) (i) Any party to an election conducted pursuant to subparagraph (A) or (B) of this paragraph may, within five days after such election, object to the election on the ground that conduct contrary to a rule relating to the election declared by the Board pursuant to its authority under section 6 or conduct contrary to a rule of decision declared by the Board in a proceeding under section 10 did affect the result of the election. Except for the purposes of issuing and enforcing rules applicable to campaigning during the forty-eight hours prior to the holding of an election, the limitations stated in subsection (c) of section 8 on the Board's authority to utilize evidence in determining that an unfair labor practice has been committed shall also be applicable in determining that an election be set aside.

"(ii) Whenever challenged ballots are sufficient in number to affect the outcome of the election, the Board shall investigate the challenges and serve a report on challenges upon the parties. Nothing contained herein shall preclude resolution in a subsequent unit clarification proceeding, of the unresolved eligibility questions raised by such challenges.

"(iii) The Board shall move expeditiously to resolve any issues raised by the objections or regarding eligibility

and certify the results of the election. An objection based on the application of the criteria in subparagraph (A) of this subsection by which an election is scheduled shall not be a basis for setting aside the election.".

SEC. 7. Section 9(d) is amended by inserting immediately after the word "thereupon" the following: "after review in accordance with section 706(2) (A) through (E) of title 5, United States Code".

SEC. 8. The first sentence of subsection (10) (b) is amended to read as follows:

"(b) Whenever—

"(1) it is charged that any person has engaged in or is engaging in any such unfair labor practice, or

"(2) it is charged that any person has engaged in or is engaging in a willful violation of—

"(A) any final order of the Board entered pursuant to subsection (c) of this section and which is not and has not been the subject of a proceeding under subsection (e) or (f) of this section, or

"(B) any final order of a court of appeals of the United States entered in a proceeding under subsection (e) or (f) of this section.

prohibiting interfence with, restraint, or coercion of employees in the exercise of the rights guaranteed in section 7 or discrimination against employees to en-

courage or discourage membership in a labor organization, and that said violation occurred within three years of the entry of the order violated,

the Board, or any agent or agency designated by the Board for such purposes, is authorized to issue and cause to be served upon such person a complaint stating the charges. Such complaint shall contain a notice of hearing before the Board or member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of such complaint. No complaint shall be issued based upon any unfair labor practice or willful violation of a final order occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the six-month period shall be computed from the day of his discharge.".

SEC. 9. Section 10 (c) is amended by—

(1) inserting "(1)" after "(c)";

(2) striking out the fifth sentence of paragraph (1) (as redesignated by this section) and inserting in lieu thereof the following: "If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged

in or is engaging in any such unfair labor practice, or has willfully violated or is willfully violating a final order as specified in subsection (b) of this section, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.";

(3) by adding in the final sentence of paragraph (1) after the word "report" the following: "containing findings of fact (including the basis on which conflicts in the evidence are resolved) and conclusions of law and in cases of exceptional novelty or complexity such further discussion of the facts or law as is necessary"; and

(4) by adding at the end thereof the following new paragraphs:

"(2) If upon the preponderance of testimony taken the Board shall be of the opinion that the allegation in the complaint that a person has willfully violated or is willfully violating a final order as specified in subsection (b) of this section has been sustained, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order certifying the identity of that person to the Secretary of Labor. Notwithstanding any other law, unless the Secretary of Labor determines that because of unusual circumstances the national interest requires otherwise, the Secretary shall certify the identity of such person to the

Comptroller General. The Comptroller General shall distribute a list to all agencies of the United States containing the names of persons certified by the Secretary of Labor pursuant to this subsection. Notwithstanding any other law, no contracts shall be awarded to such person during the three-year period immediately following the date of the Secretary's certification, unless the Secretary, in his discretion and for reasons stated in a written explanation, determines that setting a lesser period of debarment would better effectuate the purposes of the Act, or unless the agency of the United States concerned, after notice and opportunity for hearing to all interested parties, certifies to the Secretary of Labor that there is no other source for the material or services furnished by the person affected by the Board order: *Provided*, That debarment orders shall specify affirmative action to be taken to protect the affected employees' section 7 rights, and if the Board finds that the requirements of the order have been satisfied, the Secretary shall remove the debarment, or may do so if satisfied, for other reasons, that such relief will effectuate the purposes of the Act: *Provided further*, That this subparagraph shall restrict the award of contracts solely to the business entity legally responsible for the willful violation or to the local, intermediate, national, or international labor organization legally responsible for the willful violation.

"(3) (A) In a case in which the Board determines that an unlawful refusal to bargain prior to the entry into the first collective-bargaining contract between the employer and the representative selected or designated by a majority of the employees in the bargaining unit has taken place, the Board may enter an order pursuant to paragraph (1) of this subsection which includes an award to the employees in that unit of compensation for the delay in bargaining caused by the unfair labor practice in an amount equal to the difference per hour during the period of delay which period shall commence on the date an unfair labor practice complaint alleging an unlawful refusal to bargain is issued between (i) the wages and other benefits such employees were receiving at the time of the unfair labor practice increased by a percentage equal to the change in wages stated in the Bureau of Labor Statistics' Employment Cost Index for occupations covered by collective bargaining agreements for the twelve months ending on the ninety-day period during which the delay began and (ii) the wages and other benefits actually received by such employees during that period.".

"(B) In a case in which the Board determines that any person has unlawfully discriminated against employees to encourage or discourage membership in a labor organization, or has unlawfully interfered with, restrained or coerced

employees in the exercise of the rights guaranteed by section 7, during a period (i) in which employees in a bargaining unit which includes that employee are seeking representation by a labor organization, (ii) after a labor organization has first been designated or selected as a representative defined in subsection (a) of section 9 in such unit until the first collective-bargaining agreement is entered into between the employer and the representative, or (iii) in which employees currently represented by an individual or labor organization which has been certified or is being recognized by their employer or currently covered by an agreement made pursuant to the first proviso to subsection (a) (3) of section 8 in a bargaining unit which includes that employee are seeking to deauthorize or decertify that representative or rescind that agreement is alleged, the Board may enter an order pursuant to paragraph (1) of this subsection which includes an award of backpay in an amount equal to one and one-half the employee's wage rate at the time of the unfair labor practice for the time lost by reason of the unfair labor practice less the wages the employee has earned during that period.".

SEC. 10. (a) The third sentence of subsection 10 (e) is amended by inserting immediately before the period at the end thereof a comma and the following: "nor shall any objection be considered by the court unless a petition for re-

view pursuant to subsection (f) of this section has been timely filed by the party stating the objection".

(b) The first sentence of subsection 10(f) is amended by—

(1) inserting "within thirty days" after "by filing", and

(2) inserting before the period at the end thereof the following: "except that, if a petition for review has been timely filed, any other party to that Board proceeding, aggrieved by the order, may, within fifteen days of service on it of said petition, file a further petition for review".

SEC. 11. (a) The first sentence of section 10(l) is amended to read as follows: "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of—

"(1) subsection (a)(3) or (b)(2) of section 8 which deprives an employee of employment during a period (i) in which employees in a bargaining unit which includes that employee are seeking representation by a labor organization, (ii) after a labor organization has first been designated or selected as a representative defined in subsection (a) of section 9 in such unit until the first collective-bargaining agreement is entered into

between the employer and the representative, or (iii) in which employees currently represented by an individual or labor organization which has been certified or is being recognized by their employer or currently covered by an agreement made pursuant to the first proviso to subsection (a) (3) of section 8 in a bargaining unit which includes such employees are seeking to deauthorize or decertify that representative or rescind that agreement, or

"(2) paragraph (4) (A), (B), or (C) of section 8(b), paragraph (7) of section 8(b) or section 8(e),

the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.".

(b) Section 10(m) is amended by inserting "under circumstances not subject to section 10(l)," after "section 8,".

SEC. 12. Section 19 is amended to read as follows:

"SEC. 19. Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment;

except that such employee may be required in a contract between such employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a fund maintained by the employer for the sole purpose of paying individuals for their services as neutral arbitrators under the contract or to a nonreligious charitable fund exempt from taxation under section 501 (c) (3) of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee.".

SEC. 13. Section 301 of the Labor Management Relations Act of 1947 is amended by adding at the end thereof the following new subsection:

"(f) (1) Where there is in effect a collective-bargaining contract between an employer and a labor organization which is the representative of employees under section 9 (a) of this Act, the courts of the United States shall, notwithstanding the limitations stated in the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115), but subject to the limitations stated herein, have the authority in a civil action brought by that employer to restrain (A) a concerted refusal in breach of that contract to cross

a picket line not maintained by a labor organization in connection with a labor dispute; or (B) a concerted refusal to work in a breach of that contract (and concerted activity in furtherance thereof) that is neither initiated, authorized, nor ratified by the labor organization, where a refusal to cross a picket line maintained by a labor organization in connection with a labor dispute is not involved.

"(2) (A) In an action under paragraph (1) of this subsection no restraining order may issue unless the employer has, in addition to the other requirements for obtaining relief, proved at a hearing held after the labor organizations concerned have been given notice and an opportunity to oppose the granting of relief, that the concerted activity specified above has occurred or is occurring.

"(B) In an action under paragraph (1) (A) of this subsection, if the picket line is maintained by a labor organization in connection with a labor dispute, no restraining order shall be granted pursuant to this subsection.

"(C) In an action under paragraph (1) (B) of this subsection, if the labor organization does not oppose the granting of relief under this subsection on the ground that the concerted activity in question has been initiated, authorized, or ratified, it shall be conclusively established for the action in question and related actions that the activity was not so initiated, authorized, or ratified. If the labor organization has initiated or authorizes or ratifies the concerted activity, no

restraining order shall be granted pursuant to this subsection.".

SEC. 14. Section 3 (d) is amended by inserting immediately after the third sentence the following new sentence: "The General Counsel shall designate one or more officers or employees in the Board's national office and in each regional office to act as ombudsmen for the purpose of answering inquiries and disseminating information, particularly with regard to the rights, obligations, and responsibilities of those employers and employees in the small business community. The ombudsmen shall provide general information and explanation regarding the provisions of this Act, regulations of the Board, procedures involved in the processing of cases and the current state of the law with regard to particular areas of concern. Any such ombudsmen shall not be authorized to render advisory opinions or make any factual or legal determinations under this Act.".

SEC. 15. The proviso to section 14 (c) (1) of the Act is amended by striking "August 1, 1959" and substituting "May 1, 1978, and shall not assert jurisdiction over any labor dispute over which it would decline jurisdiction under those standards.".

SEC. 16. Except as otherwise specifically provided in this Act, the amendments made by this Act shall take effect sixty days after the date of enactment of this Act.

Calendar No. 574

95TH CONGRESS
2D SESSION

S. 2467

[Report No. 95–628]

IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 30), 1978

Mr. WILLIAMS, from the Committee on Human Resources, reported the following bill; which was read twice and ordered to be placed on the calendar

A BILL

To amend the National Labor Relations Act to strengthen the remedies and expedite the procedures under such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Labor Law Reform Act of 1978".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Labor Relations Act.

SEC. 2. (a) Section 3(a) of the National Labor Relations Act is amended to read as follows:

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"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor-Management Relations Act, 1947, and by the Labor Law Reform Act of 1978, is hereby continued as an agency of the United States, except that the Board shall consist of seven instead of five members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of six years. Their successors, and the successors of the other members, shall be appointed for terms of seven years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom that individual shall succeed. The President shall designate one member to serve as Chairman of the Board. No more than a simple majority of the members of the Board shall be members of the same political party. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.".

(b) (1) The third sentence of section 3 (b) is amended by striking "three" and substituting "four".

(2) Section 3 (b) is further amended by inserting after the third sentence the following new sentence: "The Board

shall within ninety days after the date of enactment of the Labor Law Reform Act of 1978 establish a procedure, upon conditions stated in the rule, pursuant to which a group specifically designated pursuant to the first sentence of this subsection to decide summary judgment cases may, where appropriate upon the motion of a prevailing party in a decision of an Administrative Law Judge issued after a hearing under subsection (b) of section 10, summarily affirm such decision. A motion for summary affirmance shall be filed within ten days after the decision of the Administrative Law Judge, any exceptions to that decision and any response to that motion shall be filed within twenty days thereafter, and the motion and response shall then be presented for decision.".

SEC. 3. The second and third sentences of section 4 (a) are amended to read as follows: "The Board shall appoint an executive secretary, and such attorneys, examiners, law clerks to Administrative Law Judges, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board

member, and any law clerk assigned to an Administrative Law Judge may for such judge, review such transcripts and prepare such drafts.".

SEC. 4. Section 6 is amended to read as follows:

"SEC. 6 (a) The Board is authorized to make, amend, and rescind (in the manner prescribed by subchapter II of chapter 5 of title 5, United States Code) such rules and regulations as may be necessary to carry out the provisions of this Act.

"(b) (1) The Board shall within twelve months after the date of enactment of the Labor Law Reform Act of 1978 issue regulations to implement the provisions of section 9 including rules—

"(A) which shall, subject to reasonable conditions, including due regard for the needs of the employer to maintain the continuity of production, provide that if an employer or agent of the employer addresses the employees on its premises or during working time on issues relating to representation by a labor organization during a period of time that employees are seeking (i) representation by a labor organization, (ii) to decertify or deauthorize a labor organization as their representative defined in subsection (a) of section 9, or (iii) to rescind an agreement made pursuant to the first proviso to subsection (a) (3) of section 8, the employees shall

be assured an equal opportunity to obtain in an equivalent manner information concerning such issues from such labor organization, and, with due regard for the rights declared in section 7, the right of such labor organization to conduct membership meetings without undue interference, and the right of the employees to the privacy of their homes, provide also in the circumstances described in clause (i), (ii), or (iii) that the employees are assured an equal opportunity overall to obtain such information from the employer and such labor organization. To obtain an opportunity to present information relating to representation pursuant to this paragraph, a labor organization shall notify the employer, in writing, that employees of that employer have demonstrated an interest in representation by that labor organization and from the time of receipt of such notice the labor organization is to be entitled to an equal opportunity to present such information in an equivalent manner;

"(B) to facilitate the resolution of disputes concerning the eligibility of voters; and

"(C) to govern the holding of elections in cases in which an appeal has not been decided prior to the date of the election.

"(2) The Board shall, to the fullest extent practicable,

exercise its authority under subsection (a) of this section to promulgate rules declaring certain units to be appropriate for the purposes of collective bargaining.

"(3) A rule or regulation issued by the Board with respect to the subject matter set forth in paragraph (1) or (2) of this subsection shall be judicially reviewable in accordance with the provisions of section 706(2) (A) through (D) of title 5, United States Code, only in a proceeding under section 10 of this Act. The failure of the Board to comply with the time requirements set forth in paragraph (1) of this subsection, or to institute a rulemaking proceeding with respect to the subject matter set forth in paragraph (2) of this subsection, within a reasonable period of time after a request for such a rulemaking procedure has been filed with the Board pursuant to section 553(e) of title 5, United States Code, to complete such a procedure within a reasonable period after its institution, may be reviewed upon the petition of any aggrieved party in the court of appeals of the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit. The court of appeals shall have jurisdiction to grant appropriate relief.

SEC. 5. Section 9(b) (3) is amended by striking out "such organization admits to membership, or is affiliated directly or indirectly with an organization which admits

to membership, employees other than guards" and inserting in lieu thereof by a hyphen and the following:

"(A) in the case of a unit involving guards regularly assigned to work on the premises of two or more employers (whether or not individual guards move between the premises of such employers), such organization admits to membership, or is affiliated, directly or indirectly, with an organization which admits to membership, employees other than guards, and

"(B) in any other case, such organization admits to membership nonguard employees at the same location, or if such organization is directly affiliated with any national or international labor organization which represents nonguard employees at the same location".

SEC. 6. Section 9(c) is amended by adding at the end thereof the following new paragraph:

"(6) (A) Notwithstanding any other provisions of section 9, whenever a petition has been filed and served on the employer, or the individual or the labor organization that is the representative defined in subsection (a) of this section, in accordance with such regulations as may be prescribed by the Board, by an employee or group of employees or any individual or labor organization acting in their behalf—

"(i) asserting that their employer declines to rec-

ognize their representative as the representative defined in subsection (a) in a unit appropriate for the purposes of collective bargaining under a rule established by the Board pursuant to section 6, that a majority of the employees in that unit have designated that individual or labor organization as their representative defined in subsection (a), and that no individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the bargaining unit defined in the petition; or

"(ii) asserting that a majority of the employees in a unit appropriate for the purposes of collective bargaining do not wish to be represented by the individual or labor organization which has been certified or is being currently recognized by their employer as the representative defined in subsection (a), or do not wish to be covered by an agreement between their employer and a labor organization made pursuant to the first proviso to subsection (a) (3) of section 8,

the Board shall investigate such petition. If the Board finds with respect to a petition filed under clause (i) that the unit there specified is a unit appropriate for the purposes of collective bargaining under a rule established by the Board pursuant to section 6, and if the Board has reasonable cause to believe that a question of representation affecting com-

merce exists and that the other conditions specified in this subsection have been met, the Board shall within thirteen days after the filing and serving of the petition direct an election by secret ballot to take place not less than twenty-one days nor more than thirty days after a petition is filed and served under this subparagraph (unless another date prior to such twenty-first day is agreed to by the employer and the representative named in the petition) and shall so notify the representative named in the petition, the employer and any other appropriate party. If the Board has reasonable cause to believe with respect to a petition filed under clause (ii) that a question of representation affecting commerce, or a question concerning an agreement made pursuant to the first proviso to subsection (a) (3) of section 8, exists and that the other conditions specified in this subsection have been met, the Board shall within thirteen days after the filing and serving of the petition direct an election by secret ballot to take place not less than twenty-one days nor more than thirty days after a petition is filed and served under this subparagraph (unless another date prior to such twenty-first day is agreed to by the employer and the representative named in the petition), and shall so notify the representative named in the petition, the employer and any other appropriate party.

"(B) In any proceeding under this subsection in which the Board directs an election by secret ballot, and which is not governed by subparagraph (A) of this paragraph, the Board shall direct the election on a date not more than forty-five days after the filing and serving of the petition and shall inform the representative named in the petition, the employer, and all other interested parties of the election date not less than eight days prior to the election except that, where the Board determines that the proceeding presents issues of exceptional novelty or complexity, the Board may direct the election on a date not more than seventy-five days after the filing and serving of said petition. In computing the time limits stated in this paragraph the days of the week during which a majority of the employees involved in the election are on vacation shall not be included.

"(C) After an election conducted pursuant to subparagraph (A) or (B) of this paragraph is completed, the Board shall, unless under a rule adopted pursuant to subsection (b) (1) (C) of section 6, the ballots have been impounded, promptly serve the parties with a tally of the ballots.

"(D) (i) Any party to an election conducted pursuant to subparagraph (A) or (B) of this paragraph may, within five days after such election, object to the election on the

ground that conduct contrary to a rule relating to the election declared by the Board pursuant to its authority under section 6 or conduct contrary to a rule of decision declared by the Board in a proceeding under section 10 did affect the result of the election. Except for the purpose of issuing and enforcing rules applicable to campaigning during the forty-eight hours prior to the holding of an election, the limitations stated in subsection (c) of section 8 on the Board's authority to utilize evidence in determining that an unfair labor practice has been committed shall also be applicable in determining that an election be set aside.

"(ii) Whenever challenged ballots are sufficient in number to affect the outcome of the election, the Board shall investigate the challenges and serve a report on challenges upon the parties. Nothing contained herein shall preclude resolution in a subsequent unit clarification proceeding, of the unresolved eligibility questions raised by such challenges.

"(iii) The Board shall move expeditiously to resolve any issues raised by the objections or regarding eligibility and certify the results of the election. An objection that an election was conducted under subparagraph (A) instead of subparagraph (B) shall not be a basis for setting the election aside.".

SEC. 7. Section 9(d) is amended by inserting immedi-

ately after the word "thereupon" the following: "after review in accordance with section 706 (2) (A) through (E) of title 5, United States Code".

SEC. 8. The first sentence of subsection (10) (b) is amended to read as follows:

"(b) Whenever—

"(1) it is charged that any person has engaged in or is engaging in any such unfair labor practice, or

"(2) it is charged that any person has engaged in or is engaging in a willful violation of—

"(A) any final order of the Board entered pursuant to subsection (c) of this section and which is not and has not been the subject of a proceeding under subsection (e) or (f) of this section, or

"(B) any final order of a court of appeals of the United States entered in a proceeding under subsection (e) or (f) of this section.

prohibiting interference with, restraint, or coercion of employees in the exercise of the rights guaranteed in section 7 or discrimination against employees to encourage or discourage membership in a labor organization, and that said violation occurred within three years of the entry of the order violated,

the Board, or any agent or agency designated by the Board for such purposes, is authorized to issue and cause to be

served upon such person a complaint stating the charges. Such complaint shall contain a notice of hearing before the Board or member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of such complaint. No complaint shall be issued based upon any unfair labor practice or willful violation of a final order occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the six-month period shall be computed from the day of his discharge.".

SEC. 9. Section 10 (c) is amended by—

(1) inserting "(1)" after "(c)";

(2) striking out the fifth sentence of paragraph (1) (as redesignated by this section) and inserting in lieu thereof the following: "If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, or has willfully violated or is willfully violating a final order as specified in subsection (b) of this section, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.";

(3) by adding in the final sentence of paragraph (1) after the word "report" the following: "containing findings of fact (including the basis on which conflicts in the evidence are resolved) and conclusions of law and in cases of exceptional novelty or complexity such further discussion of the facts or law as is necessary"; and

(4) by adding at the end thereof the following new paragraphs:

"(2) If upon the preponderance of testimony taken the Board shall be of the opinion that the allegation in the complaint that a person has willfully violated or is willfully violating a final order as specified in subsection (b) of this section has been sustained, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order certifying the identity of that person to the Secretary of Labor. Notwithstanding any other law, unless the Secretary of Labor determines that because of unusual circumstances the national interest requires otherwise, the Secretary shall certify the identity of such person to the Comptroller General. The Comptroller General shall distribute a list to all agencies of the United States containing the names of persons certified by the Secretary of Labor pursuant to this subsection. Notwithstanding any other law, no contracts shall be awarded to such person during the

three-year period immediately following the date of the Secretary's certification, unless the Secretary, in his discretion and for reasons stated in a written explanation determines that setting a lesser period of debarment would better effectuate the purposes of the Act, or unless the agency of the United States concerned, after notice and opportunity for hearing to all interested parties, certifies to the Secretary of Labor that there is no other source for the material or services furnished by the person affected by the Board order: *Provided*, That debarment orders shall specify affirmative action to be taken to protect the affected employees' section 7 rights, and the Board shall recommend removal of the debarment or reduction of the debarment period to the Secretary if it is satisfied that the affirmative action requirements of the order have been effectuated, or if it is satisfied, for other reasons, that such relief will effectuate the purposes of the Act: *Provided further*, That this subparagraph shall restrict the award of contracts solely to the business entity legally responsible for the willful violation or to the local, intermediate, national, or international labor organization legally responsible for the willful violation.

"(3) (A) In a case in which the Board determines that an unlawful refusal to bargain prior to the entry into the first collective-bargaining contract between the employer and the representative selected or designated by a majority

of the employees in the bargaining unit has taken place, the Board may enter an order pursuant to paragraph (1) of this subsection which includes an award to the employees in that unit of compensation for the delay in bargaining caused by the unfair labor practice in an amount equal to the difference per hour during the period of delay between (i) the wages and other benefits such employees were receiving at the time of the unfair labor practice increased by a percentage equal to the change in wages and other benefits stated in the Bureau of Labor Statistics' average wage and benefits settlements, quarterly report of major collective-bargaining settlements, for the quarter in which the delay began and (ii) the wages and other benefits actually received by such employees during that period. If the Secretary of Labor certifies to the Board that the Bureau has, subsequent to the effective date of the Labor Law Reform Act of 1978, instituted regular issuance of a statistical compilation of bargaining settlements which the Secretary determines would better effectuate the purposes of this subsection than the compilation specified herein, the Board shall, in administering this subsection, use the compilation certified by the Secretary.

"(B) In a case in which the Board determines that any person has unlawfully discriminated against employees to encourage or discourage membership in a labor organization,

or has unlawfully interfered with, restrained or coerced employees in the exercise of the rights guaranteed by section 7, during a period (i) in which employees in a bargaining unit which includes that employee are seeking representation by a labor organization, (ii) after a labor organization has first been designated or selected as a representative defined in subsection (a) of section 9 in such unit until the first collective-bargaining agreement is entered into between the employer and the representative, or (iii) in which employees currently represented by an individual or labor organization which has been certified or is being recognized by their employer or currently covered by an agreement made pursuant to the first proviso to subsection (a) (3) of section 8 in a bargaining unit which includes that employee are seeking to deauthorize or decertify that representative or rescind that agreement is alleged, the Board may enter an order pursuant to paragraph (1) of this subsection which includes an award of backpay in an amount equal to one and one-half the employee's wage rate at the time of the unfair labor practice for the time lost by reason of the unfair labor practice less the wages the employee has earned during that period.".

SEC. 10. (a) The third sentence of subsection 10 (e) is amended by inserting immediately before the period at the end thereof a comma and the following: "nor shall any ob-

jection be considered by the court unless a petition for review pursuant to subsection (f) of this section has been timely filed by the party stating the objection".

(b) The first sentence of subsection 10(f) is amended by—

(1) inserting "within thirty days" after "by filing", and

(2) inserting before the period at the end thereof the following: "except that, if a petition for review has been timely filed, any other party to that Board proceeding, aggrieved by the order, may, within fifteen days of service on it of said petition, file a further petition for review".

SEC. 11. (a) The first sentence of section 10(l) is amended to read as follows: "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of—

"(1) subsection (a)(3) or (b)(2) of section 8 which deprives an employee of employment during a period (i) in which employees in a bargaining unit which includes that employee are seeking representation by a labor organization, (ii) after a labor organization has first been designated or selected as a representative defined in subsection (a) of section 9 in such unit until the first collective-bargaining agreement is entered into

between the employer and the representative, or (iii) in which employees currently represented by an individual or labor organization which has been certified or is being recognized by their employer or currently covered by an agreement made pursuant to the first proviso to subsection (a) (3) of section 8 in a bargaining unit which includes such employees are seeking to deauthorize or decertify that representative or rescind that agreement, or

"(2) paragraph (4) (A), (B), or (C) of section 8(b), paragraph (7) of section 8(b) or section 8(e),

the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.".

(b) Section 10(m) is amended by inserting "under circumstances not subject to section 10(l)," after "section 8,".

SEC. 12. Section 19 is amended to read as follows:

"SEC. 19. Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment;

except that such employee may be required in a contract between such employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a fund maintained by the employer for the sole purpose of paying individuals for their services as neutral arbitrators under the contract or to a nonreligious charitable fund exempt from taxation under section 501 (c) (3) of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee.".

SEC. 13. Section 301 of the Labor Management Relations Act of 1947 is amended by adding at the end thereof the following new subsection:

"(f) (1) Where there is in effect a collective-bargaining contract between an employer and a labor organization which is the representative of employees under section 9 (a) of this Act, the courts of the United States shall, notwithstanding the limitations stated in the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115), but subject to the limitations stated herein, have the authority in a civil action brought by that employer to restrain (A) a concerted refusal in breach of that contract to cross

a picket line not maintained by a labor organization in connection with a labor dispute; or (B) a concerted refusal to work in a breach of that contract (and concerted activity in furtherance thereof) that is neither initiated, authorized, nor ratified by the labor organization, where a refusal to cross a picket line maintained by a labor organization in connection with a labor dispute is not involved.

"(2) (A) In an action under paragraph (1) of this subsection no restraining order may issue unless the employer has, in addition to the other requirements for obtaining relief, proved at a hearing held after the labor organizations concerned have been given notice and an opportunity to oppose the granting of relief, that the concerted activity specified above has occurred or is occurring.

"(B) In an action under paragraph (1) (A) of this subsection, if the picket line is maintained by a labor organization in connection with a labor dispute, no restraining order shall be granted pursuant to this subsection.

"(C) In an action under paragraph (1) (B) of this subsection, if the labor organization does not oppose the granting of relief under this subsection on the ground that the concerted activity in question has been initiated, authorized, or ratified, it shall be conclusively established for the action in question and related actions that the activity was not so initiated, authorized, or ratified. If the labor organization has

initiated, or authorizes or ratifies the concerted activity, no restraining order shall be granted pursuant to this subsection.".

SEC. 14. Except as otherwise specifically provided in this Act, the amendments made by this Act shall take effect sixty days after the date of enactment of this Act.

The CHAIRMAN. We welcome Senator Lugar as our first witness, and invite my colleague, Senator Hatch, to make any statement.

Senator HATCH. Thank you, Mr. Chairman.

I have no doubt that our chairman is sincere in his effort to accommodate Senators with regard to this particular matter of labor law reform.

But these hearings are really unnecessary, as demonstrated by the lack of Senators' response because first, the issue has already consumed 19-plus days of floor debate. I might mention that during that debate 23 Senators made speeches in opposition to this bill, and only 12 made speeches in favor of the bill.

There were extensive insertions in the record, according to the tally—actually there are more than this, but up to a certain time in the bill a total of 136,864 lines in the Congressional Record have been consumed by the debate on the labor reform bill, and figuring 240 lines per page in the Congressional Record, this works out to about 570 pages in the Record.

The opponents of the bill account for 105,157 lines, and the proponents account for 31,737 lines.

Counting only speeches on the bill, as I said, 23 Senators have expressed opposition and only 12 have expressed support.

I might also add I would ask unanimous consent at this time that all of the floor debate and all of the amendments filed to H.R. 8410 and the Byrd substitute be included within our hearing record for these particular hearings.

I ask unanimous consent that that be so.

The CHAIRMAN. Would you repeat that request?

Senator HATCH. I ask unanimous consent that all of the floor debate and all of the amendments filed to H.R. 8410 and the Byrd substitute be included within our hearing record.

The CHAIRMAN. I wonder if you would reserve that, and we will talk about that? The expense of that is monumental. Let us talk about that.

Senator HATCH. I will be glad to discuss it.

The CHAIRMAN. I know exactly to the dollar where we are in our budget, and my anxiety increases each day.

Certainly this record of the debate is available to everybody in its present form.

Senator HATCH. If hearings are desired, I think this committee should open them up to the public and the administration, it seems to me, to obtain views on such questions as, No. 1, the inflationary impact of this bill. I think we should call upon the chief administration fighter against inflation, Mr. Strauss; Pierre Renfret, who has not yet testified before this committee, yet who did the only valid economic impact analysis on this matter; and I would like people like Arthur Burns, Mr. Bosworth, Mr. Myers, who, in a recent testimony before the Joint Economic Committee, indicated that aspects of this bill are inflationary.

No. 2, I would recommend that we have testimony regarding the impact on small business, including the Byrd amendment in regard thereto.

And, No. 3, the direct cost to the taxpayers.

I think on that matter we should bring in Board Chairman Fanning and General Counsel Irving at the National Labor Relations Board, and I think we should have witnesses from the Small Business Administration to comment on their report, which played such a crucial role in the floor debate.

And then, lastly, I think we should have other open questions on the Byrd substitute which seem in doubt.

Furthermore, it seems to me that in light of the President's pollster's conclusions, that is Mr. Caddell's Cambridge Research Associates, that the largest single reform desired by most of the respondents was a reduction of labor union power, which information came to us during the course of our floor debate. Public hearings might be essential in determining how this bill should be restructured and reworked to reflect the public's interest.

The present bill, H.R. 8410 and the Byrd substitute do not, in my judgment, meet these issues.

So I think if we are going to have hearings, we know basically the feelings of the Senators who have expressed themselves on the floor and if there are others who do desire to, I would certainly want to listen to their expressions.

But I would suggest if we want to have sincere and dedicated hearings to resolve this dilemma and difficulty, then at the very least we should have hearings involving those people and organizations who I have just mentioned.

The CHAIRMAN. Mr. Renfret was invited and he declined.

Here is the way I look at it——

Senator HATCH. Would you yield?

The CHAIRMAN. We were over there for all that time. We were in a situation where, if anybody had any ideas to improve the bill that is being debated, the amendment process was available for that purpose. It was not used for that purpose, however.

We could not get a vote on anything. That is why it was welcomed, as far as I was concerned, when the agreement came to recommit the bill to the committee, to get us into a forum where we can be able to make some specific decisions. Here we can specifically address the issues before us.

Now, we would be happy to hear from Senator Lugar——

Senator HATCH. Would the Senator yield?

The CHAIRMAN [continuing]. Who did play a significant role in the debate in the Senate. And now we feel we can be even better served by his attention to the bill during this hearing, and his ideas on how the objectives can in his judgment be better formed through legislation.

Senator Chafee, did you have anything?

Senator HATCH. Would the Senator yield for one comment on that?

Dr. Renfret did not appear because he was not through with his economic impact analysis at the time. That was the only reason. I would suggest that it would be very beneficial to have some of these top administration officials testify so we can ask them.

If this bill is in fact as inflationary as Dr. Renfret says, or anywhere near as inflationary, there is no redeeming reason to have this bill come back on the floor.

That is only one reason.

Plus the other witnesses I have talked about. I think it is important to note that one of the first things, it seems to me, that has to be resolved happens to surround those comments made by representatives of labor during the debates on this matter, during the presenatorial debates on this matter, where they have indicated that, sure, they will take amendments, but when we get to conference, it is going to be whatever the House wants—or whatever the labor movement wants.

We have had some indication that there may be some way of circumventing that, but I have not seen any real strong approach to circumventing it, other than the majority leader standing and saying he would use his best efforts to see that whatever is passed by the Senate will be the bill, but I do not see how in the world the Senate can impose its will on the House of Representatives.

If we go back to the House Labor Committee, which is, as you have characterized this committee, overwhelmingly in favor of this bill in its present form, we are going to have a very difficult time really ever resolving this problem.

The CHAIRMAN. Senator Lugar.

STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Mr. Chairman, I appreciate the information for all Senators to approach this committee with suggestions for refining, deleting, adding provisions to S. 2467, the labor law reform bill which has been recommitted to this committee.

I have accepted your invitation, and prepared my testimony personally, and have given a careful study of the long debate we have conducted on S. 2467 to date.

My role as one organizer of the opposition to S. 2467 was visible and my reasons for that opposition were elaborated throughout 8,515 lines of Congressional Record debate.

I will not reiterate the specific defects which I find in the legislation. Or will I presume to speak for all other Senators who resisted cloture through an unprecedented six-petition attempts. The great resilience of our debating effort lay in its remarkable breadth, encompassing 19 Senators who committed themselves to fixed "teams" and regular floor participation, as well as several more Senators whose involvement was equally active if more occasional.

This same breadth of support precludes any one Senator from assuming the posture of the single spokesperson, and I do not attempt to do so today. I have reviewed the principal themes of my remarks with several of my colleagues, and I believe that my views are in general harmony with the thoughts of most anticloture Senators, and with several Senators who voted for cloture. The degree of consensus, like the degree of merit accompanying these remarks, is a matter for the committee to judge.

I chose to take an active role in the extended debate against S. 2467 because I believed that, as it emerged from this committee, the legislatation was unfairly addressed to only a narrow area of labor law, and the concerns of only one sector of the American economy, namely, national labor organizations. The problems of the general public, of individual workers, and of small business managements were given minimal consideration. Such a bill was characterized accurately as special interest legislation of the most brazen sort, and it enjoyed limited support in the country.

To argue that S. 2467 is unbalanced and unfairly limited to the special interests of national labor organizations is not to suggest that those interests should never be addressed in any bill at any time. Many genuine abuses have been indentified and many legitimate arguments can be made for specific provisions of the S. 2467 proposal.

The opponents to S. 2467 strongly asserted that to deal solely with the complaints of labor unions and to disregard the problems of small business, individual workers, and a general public which is increasingly exposed to hazard by public and private strikes and job actions would not suffice.

I am certain that a large Senate majority, including, as far as I know, each anticloture Senator, is willing to enter a constructive dialog leading to labor law reform legislation, provided that both dialog and legislation approach the subject in a fair and comprehensive fashion. Thorough review of the problems of all actors in today's labor law controversies could lead to a far-reaching reform of existing statutes which might include portions of S. 2467 and enjoy consensus support on the Senate floor. I encourage the committee to embark on such a comprehensive inquiry.

The fundamental decisions facing the committee include, in addition to the scope of its next inquiry, the timing of its activities. There are self-evident and compelling reasons why the committee should look toward a timetable beyond calendar year 1978. Evidence abounds that the patience of the Senate is clearly exhausted with this issue, for this session. The time available for deliberation on so many important matters has been compressed to a point in which each legislative day is literally precious. At least three Senators who voted for cloture on all six ballots have already visited privately with the majority leader and expressed their intentions to vote against cloture should the bill be returned to the floor during this session. We believe that others may do so. The sense of the unanimous consent agreement under which the bill was recommitted clearly was to eliminate language requiring the bill's return. And given the comprehensive character which the legislation would have to assume in order to assure broad Senate support, far more time will be required to shape and debate such legislation than remains this year.

In view of these unambiguous signals, I propose that the committee resolve to defer the reporting of another labor law bill for the balance of this session, and to embark on a review of the entire labor-management landscape in quest of a bill addressing the problems of employees, small businesses, and innocent bystanders to labor disputes, a quest and a bill on which we can all cooperate.

A solid majority of Senators earnestly hope that the committee will adopt this course. But if the members of this committee feel absolutely impelled to press on, then I am prepared to suggest minimum changes which would be necessary before I, as one opponent of S. 2467, would be willing to agree to limited debate by cloture or consent agreement.

The equal access provision, in any form, is unacceptable. Inasmuch as its deletion has been proposed by many Senators, including some who have favored cloture, this proposal takes on almost the character of a unanimous consent request.

The make whole and debarment punitive provisions, as presently structured, are far too intimidating for small businesses to contemplate, especially when wielded directly by what is perceived as an unfriendly NLRB. In some form, the penalties might be acceptable in the hands of the courts, pursuant to their contempt powers, and on a basis of individual case justice. Assurance that the penalties will be impartially and nonarbitrarily administered is essential.

Excess baggage altering sound principles of existing law should be jettisoned from S. 2467. The proposal for Board expansion, an exercise in bureaucratic turf building, is one item which should be cast overboard. The traditional prohibition against organizing of guards by nonguard unions should be maintained.

The provisions of S. 2467 requiring expedited election schedules should be modified to require that the NLRB first resolve all preelection unit and eligibility issues. I would not object to elections within 50 to 80 days following the filing of a petition, but a final result will clearly be forthcoming in a prompt manner only if unit and eligibility matters are settled before an election as opposed to extensive legal activity after a ballot.

Reforms which should be considered include, but are not limited to: One, a secret ballot election provision which would make a union victory in a secret-ballot election a condition precedent to the imposition of a bargaining obligation on any employer; two, a provision which would make it an unfair labor practice for any person to instigate, engage in, support or condone violence or mass picketing at any employer's premises; three, a provision that would make it an unfair labor practice for a labor organization to maintain, continue, or resume a strike in any unit following an employee referendum in which a majority of the employees voted against striking.

The problems of innocent citizens who are victimized by strikes to which they are not parties must be examined sensitively by the Congress. During the recent strike in the coal industry, the President characterized the Taft-Hartley Act as inadequate. In other forums, I have suggested substantial amendments to Taft-Hartley which would strengthen the President's hand in attempting to protect the health and safety of all Americans during crippling emergencies which national strikes may produce.

I would be prepared to work with the committee to effect such changes in existing law. Clearly this is the type of reform which the public has in mind when it thinks about our labor laws.

Furthermore, the majority leader of the Senate and the distinguished chairman of this committee will need to formulate ironclad assurances that constructive changes in S. 2467 will remain in any final bill adopted by both Houses, with or without conference. To pass a bill without such assurance would be an exercise in futility.

Inquiry into these topics obviously is a tall order, perhaps too tall for the remainder of this session. Should the committee disregard the advice which so many Senators are offering and plunge ahead with S. 2467 or only a cosmetically different version of it, I am convinced that the Senate will reject such attempts. Many Senators are well prepared to effect that rejection.

If on the other hand, the committee decides to widen the scope of its inquiry and lengthen the time-frame to accommodate a review of the rights of workers and the rights of the public, as well as the rights of union organizers, I predict tht the Human Resources Committee will enjoy the active and constructive cooperation of those who opposed the efforts to pass S. 2467 during the last 5 weeks.

The CHAIRMAN. Thank you very much, Senator Lugar. Let me understand your conclusion here.

You have dealt with the bill, addressing its provisions on access, the makeup of the Board, the guards provisions, the debarment and make-whole remedies, and election time period. Then you go into other areas that are not related to this National Labor Relations Act.

In your last paragraph, second to last paragraph, you say: "Should the committee disregard the advice which so many Senators are offering" and so on. You know what the advice is? They said they do not want any more extended debate. They do not want any more filibuster.

I have not talked to any that would not want to have an opportunity to deal with the substance of the bill, listen, debate, discuss amendments and vote.

What they do want—and I think we should all agree now—is that we should not have another debate without coming to a decision. That is what we had for better than a month, debate without decision. So we can agree there.

I think that is what the Members are talking about. The Members I talked to, even those who just do not want to go through cloture petitions again, would like to get us in with this bill, would like to consider its provisions and have amendments to it discussed and voted, and that would be that.

Let us deal with those suggestions you make relating to things that are in this bill, and see if we can further refine your thinking, which is valued thought around here. Your interest has been demonstrated in the subject matter.

On the equal access provision, the first thing you mention, you, as a conclusion, would provide no opportunity for union election activity on the premises of the employer, notwithstanding anything the employer has done to make his message clear to his employees on his property at the time that he selects; is that right?

Senator LUGAR. Just simply stated, I think the entire provision ought to be eliminated from the bill so that your conclusion is correct. I think there are serious problems, even going to constitutional problems; but as I say, this has been argued extensively already on the floor, and it can be argued here.

I am inclined to believe that that particular objection has such a pervasive influence, equal access provision ought to be eliminated from the bill.

The CHAIRMAN. What was your conclusion?

Senator LUGAR. Just simply we should not address that provision.

The CHAIRMAN. Although you personally and individually might not share what you sense is a consensus out there. In the debate, Senator Lugar, you said, "One could agree totally that in the best of all worlds, equal access ought to be available and equal opportunity to present arguments. In the real world of industrial life trying to achieve this takes some doing."

Senator LUGAR. Yes; I think I furthermore said, either on the occasion of that speech or others, that I think it is unattainable in a constitutional fashion. I think simply as a practical matter it cannot be legislated; so it takes some doing. I would amplify simply to say that I think that really is beyond our doing in the course of this legislative effort.

The CHAIRMAN. We have done it in another context. I think it has worked out very well, our equal access. When an employer opens his property and makes his employees available to those of us who are running for public office, there is now established the requirement that he give equal time to the opposition. This concept is sort of engrained in our election procedures, the fairness of equal opportunity to go to the nontraditional place for campaigning.

Here we have a place, the work place, which is not traditional for the campaigning by the union, but traditional for the employer.

Senator LUGAR. I appreciate that an attempt has been made in this regard, and I think it has inexact application. My campaigning activities have not been as extensive as those of the chairman, but I can recall that, to say the least, very unequal treatment from plant to plant or premise to premise, quite withstanding attempts may be to provide that.

I would simply say the public access for election campaigning notwithstanding, the thing we are discussing here is a little different. The employer has at least a private property right. That is simply not the situation, it seems to me, that makes quite analogous to the political campaign effort and employers talking about use of property and property rights, limits of his free speech, and I appreciate it is interesting debate; but I am just saying that in my judgment, it is not one that falls in an analogous pattern with the election situation and not one that is going to be remedied I think without amendment to the constitution.

I think there are some constitutional problems with equal access and therefore ought to be deleted from this bill.

Senator RIEGLE. Mr. Chairman, would you yield?

The CHAIRMAN. Surely.

Senator RIEGLE. Do you make a distinction between a company that is solely owned by its operator versus a corporation which, in effect, is publicly held?

Senator LUGAR. I think there are many distinctions. During the course of the debate, very frequently talked about the perceptions that come of this law, and equal access provisions on the basis of size and scope. Once again, legislatively I am not certain how those distinctions are made constitutionally different.

Senator RIEGLE. You do see a difference? Would you be willing to have a different rule for businesses owned by one individual versus corporations——

Senator LUGAR. No; I think my position is that the equal-access provision is simply not going to work out at all. In terms of conversation about perception of small businessmen and large businessmen as they look at it, I think this is an interesting speculation.

I think there are substantial differences which we would be frank to discuss during the debate.

Senator RIEGLE. Mr. Chairman, I appreciate your yielding.

As I go through your testimony, Senator Lugar, I see several references to small business. How do you define small business? What is small business? What is your definition?

Senator LUGAR. I would be prepared to work with the committee on such definition, at least for purposes of any kind of law. I would

say the rough rule of thumb is a business with 100 employees or less in America is small. I suspect an argument can be made for 200; but somewhere in that range. I think we are talking about a business that is pretty small.

Senator RIEGLE. Thank you, Mr. Chairman.

Senator CHAFEE. Could I ask one question, if I might?

The CHAIRMAN Sure.

Senator CHAFEE. If seems to me, as I followed the debate, Mr. Chairman, that the rationale for the bill was to eliminate procedural difficulties and roadblocks that were imposed in union elections and union organization, and that the equal access had nothing to do with procedural roadblocks and procedural problems.

It was entirely a new form of activity that was not encompassed anywhere else within the objectives of the bill.

It seemed to me that that was one of the principal reasons that the objections to equal access existed, that it had nothing to do with what was portrayed as the rationale for the bill, the so-called J. P. Stevens roadblock.

Another problem with equal access that I heard raised frequently, and I wonder if the witness would perhaps comment on it, is that equal access is not an equal presentation, because the management is severely limited in what they can say to the workers, any promise, any threats, any coercion, any bonus, anything like that is an unfair labor practice, whereas no such restrictions are imposed on the other side that makes presentations and equal access argument.

Now, those seem to me to be some of the principal objections as I heard them from those who came to see me.

Would you care to comment on those, Senator Lugar?

Senator LUGAR. The Senator from Rhode Island stated a number of objections very well. I do not have further comment on that presentation. I concur that a number of people are concerned for that reason, and, as you well pointed out in phrasing earlier remarks, this seems to be a new extension of labor law and hardly a trifling change in the procedural situation.

Senator CHAFEE. Another point, if I might.

As you recall, Mr. Chairman, so well, there are two aspects of the equal access. One was so-called captive audience, which might, setting aside these arguments that have been made, there is some rationale for, in trying to get an equal story across to the employees, but where it really got difficult and I find raised very legitimate concern was not the captive audience, but the boss going out in the shop and wandering around for 17 and a half minutes on Tuesday, and then the union organizer having access into the shop in nonwork spaces, whatever that was, and you recall the discussion we had in the committee and what great difficulties we had in trying to figure out what was time and where he could go, where he could stand, whether the boss really had talked union activities, had he answered questions, had he raised the subject.

That seemed to raise difficult things.

Even if you get into equal access, you get into captive audience versus wandering-around type of problem.

Senator RIEGLE. Would the Senator yield?

Senator CHAFEE. Yes.

Senator RIEGLE. I think he is correct in saying that a good deal of thought and discussion was given to that, and the committee record will show that. I think, by the way, that this is something we ought to do with all matters of law. The problem we have had in the past with too many Federal laws has been insufficient care in those descriptions. That was not the case here.

You will recall, for example, that in defining what constituted nonwork areas, we were very precise. The decision in the committee was to make it very clear that the equal access provision was not designed to provide union organizers with any means to disrupt the work process or the production process.

It was not to involve equal access into those areas. It was restricted to specific areas like the washroom, the cafeteria, lunchroom, or the break area, and parking lots.

Those were the areas I recall we specifically enumerated. The craftsmanship that went into defining and making very clear the areas that were to be allowed, and those that were not to be allowed, was done far more thoroughly here than in most legislation I have seen.

I do not think there was a problem with ambiguity when the bill left here.

I think it was quite specific while one may argue that it was not done the way one would have liked—which I think is a reasonable argument—it was not up in the air or fuzzy, but clear, well debated, well defined, and I think reasonable.

People can disagree with that. But I think it is important to know that this was not something that was done in incomplete fashion, but rather with extreme care and thoroughness.

Senator CHAFEE. I agree it was done with some considerable discussion, but I think when we all left here we were a little uncertain as to just how it would apply. As you recall, there was considerable discussion on the whole subject.

I agree with the witness that of all the points in this bill that was caught in the claw of not only those who voted against cloture, but many who voted for cloture, is this equal access which was the greatest stumbling block of all.

Senator HATCH. I would say the Senator is partly correct. There were three major provisions which really caused tremendous disconcertion.

No. 1 was the so-called quick election provision.

No. 2 was equal access.

No. 3, which causes the most concern among small business communities and really among, I think, wage and price councils is the make-whole provision.

I think the Senator here has done an excellent job of stating that, sure, we could work out a bill that would be acceptable, but these and other provisions have got to be taken care of, and, frankly, equal access, make-whole, quick elections have been totally unacceptable.

The CHAIRMAN. In the time we have now, is there any part of the area, in the vicinity of the workplace, that the Senator from Indiana feels would present a fair opportunity for the other side to try to make its case? I do not know if your experience has been as mine, but I found, going to a plant where you were going in to make your election effort, that the parking lot often was a readily available place to reach

employees in a concentrated way. During our debate, this was suggested informally more than formally, but the opportunity for the organizing campaign to go to the parking lot seems reasonable; that is where the employees are. They have to go get their cars.

Does that have, or ring any response of being a fair opportunity for the part of the campaign, the organizer's campaign?

Senator LUGAR. Mr. Chairman, I have tried to run through in my own mind what you are proposing. In other words, the entirety of what is an equal access idea might be reduced to visits by organizers to the parking lot. I suspect that is worth discussing, but I am inclined to find that the general problem of the constitutional provisions on equal access are probably going to provide problems even in a pragmatic way if we agree that people could enter the parking lot. I would be willing to explore that.

I am certain the committee and the counsel will. But I think there is some substantial——

The CHAIRMAN. If it were not found to have a constitutional impediment, does this strike you as having a degree of fairness that would have any appeal to you?

Senator LUGAR. I am a fair man. I am willing to try to think pragmatically through a number of things. I would say off the top of my head, I would need to take a look at what the implications are, how many people, what time, what sort of intimidating presence the people might be involved in. It is conceivable, but I think we need to take a look at that.

The CHAIRMAN. I think we, in the substitute offered by Senator Byrd, if you recall, proposed a limitation on the number of organizers that could come in, in response to the employer's actions that trigger access. The access provision, as written in the substitute, had this approach, a limitation or the number, with a required notice of time of arrival.

Senator LUGAR. As I recall, one of the vital objections to the Byrd proposal was this whole trigger mechanism idea, quite apart from the locations and the numbers and so forth. In other words, what we are talking about, the parking lot, that is one aspect of it. But as I recall, the Byrd substitute made it possible through simply sending in a notice that an organization attempt of some sort was underway for this starting in motion conceivably a reaction by an employer, and as he reacted, then all of the equal access starts.

I think that was a much more severe limitation in my own mind of the thing, quite apart from the parking lot, as to whether people meet there, as to how all of this gets underway, and miscalculations on the part of the party.

So if we were going back to the Byrd substitute, I think we would have to take each of the elements sort of one by one and see how they are interrelated, quite apart from location, the question of timing, and triggering.

The CHAIRMAN. There was no provision for a requirement of a percentage showing of interest in organizing, and we discussed it in our report. We did not have it in the substitute, a 10-percent showing of interest. This would be much more precise in establishing the beginning of the period for triggering any kind of access.

Senator LUGAR. There would need to be somewhat more precision. I would think a fishing expedition might occur otherwise, which is the first action, someone sent a letter without there being 10 percent——

Senator HATCH. I might also add there was an extremely extensive discussion on the fact that a petition—they had filed their petition in order to trigger equal access, and that was basically totally clearly unacceptable at that time. So we discussed the whole ramification, but the committee would not accept that, the committee would not accept 10 percent at that particular time.

The argument was showing of interest should be a petition if that were so. Also, Mr. Chairman, if I might just interrupt you another second, I think Senator Riegle brought up an important point, that is under present law the Supreme Court said there are certain very extreme situations where equal access can be triggered under present law without changing the law. In other words, where there is an injustice.

But Senator Chafee, I think, brought up some very good points that they can do just about anything they want to, except on the premises. They can make almost any statement they want to, without fear of unfair labor practice, even though they know they are untrue. They have a right within 10 days of the election to call on every employee in their home, neither of which the employer can do. I think you have made a very good case here.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Senator Lugar, sorry I had a judge hearing that was postponed so I was a little bit late. But I did read your statement.

I am interested in your proposal on the make whole provision. I wonder if you could just elaborate a little bit on that?

Senator LUGAR. My thought there is not developed. Let me develop it a little further.

It seems to me to make whole and debarment I lumped together, they are substantially different ideas. But I think, as opposed to being activated by formula or by index, that individual justice ought to be sought and sought through the courts.

It seems to me that through injunctive relief in courts, through timely action in the judicial system, as opposed to NLRB, that severe injustice could be alleviated, and that that is the proper way to approach that.

As I recall, one of the problems of make whole as we got into debate on the floor is that it involved an unusual index of the conditions involving businesses of 5,000 employees, and this was modified in the Byrd substitute, because objection was recognized, to try to think of another type of index that would seem to be more logical.

I would think we would want to get away from indexes altogether, and I think we would want to get back into court activity.

Senator SCHWEIKER. Do I understand what you are saying, that the make whole concept, if it was administered by the courts along the lines you are pointing, might be acceptable?

Senator LUGAR. Yes. I think there are injustices that need to be met. It seems to me that the procedure I am offering here is a different one than the one that was offered in the original bill or the Byrd substitute, that the abuses are there, on occasion, and need to be met.

There has to be some rational way of doing that. I am suggesting the judicial system is going to be perceived by most business people as a better method than the NLRB which is sometimes perceived in adverse terms.

Senator SCHWEIKER. Thank you, Mr. Chairman.

The CHAIRMAN. All right.

So we can know the areas in which you think the enforcement should take the injunctive route——

Do you suggest an application of that method, the injunction, to this remedy situation where we now have the make whole, which is dollars and cents remedy? I take it that you would suggest that rather than go after a finding of an unfair labor practice, a failure to bargain, that the Board go to court for an injunction, enjoining the employer to cease and desist and to get to bargaining?

Senator LUGAR. Yes. I think that is a rough approximation of the route I would follow. It seems to me this is likely to lead to an individual justice situation on the merits of that particular case to a greater extent than what I think is likely to be a difficult problem for the committee, using an index, regardless of how constituted.

The CHAIRMAN. To arrive at ultimate fairness in the make whole remedy and its application of like settlements for the given situation would be very time consuming, not difficult, but time consuming. Many people thought the index should be based on employers of the same size, same region and settlements of like companies, and that these factors should be applied to the offending company——

Senator LUGAR. I appreciate that. I think motivation of the committee was probably well intended to try to find some exact arithmetic justice. I do not think that can be found.

Once again, I think the indexes, although they are of use in this respect, probably lack some precision.

Senator SCHWEIKER. You are saying the court as opposed to NLRB should have this remedy, and they should, on a case-by-case basis, use these factors but not index factors?

Senator LUGAR. That is correct.

Senator HATCH. He is saying in a contempt proceeding. It has to be a situation where there really has been a flagrant, willful violation. That is the way I read your statement here this morning. You say in some form penalties might be acceptable in the hands of the courts pursuant to their contempt powers, and on a basis of individual case justice, which I applaud. I think if we have to have that type of remedy, it ought to be based on justice, not upon the needs of any particular special interest group. And certainly not bagged up by the Bureau of Labor Statistics standards.

The CHAIRMAN. The procedure here would be that the General Counsel would present a charge of unfairness, failure to bargain, and the Board would come to its decision if it found failure to bargain, an unfair labor practice, it would go to the court and get an injunction, ordering the employer to cease and desist, and get to the bargaining table. And this would be the fastest route to the bargaining table for the employer who was avoiding the law and not bargaining.

Senator HATCH. That is not what he is saying. He is saying that can occur——

The CHAIRMAN. Wait a minute. Maybe we had better ask Senator Lugar what the procedure is that you have been suggesting.

Senator LUGAR. I have not presented obviously in this paper a detailed procedure. I would be happy to research sort of step by step if the committee wants to pursue this. What I said as a general point is that I think we ought to have individual cases as opposed to the use of an index for a blanket remedy; that the court procedures that allow I would think for a proper hearing in a proper forum other than NLRB is of the essence as a perception of fairness on the part of the employer involved; and the procedural steps in the midst of this, well, I would need the guidance of the committee to go through this, but I think the essential elements of what I am saying are clear, however, in terms of the forum and the individual case and search for justice, and the use of the contempt citations of the courts that are enforcement weapons.

The CHAIRMAN. Thank you, Senator Lugar.

Now, if we could go to one of the other specifics you mentioned in your statement, the election, the time period that must precede the election itself.

You did address yourself to the specific times, as I recall, two or three times, in the debate.

We had thought, quite frankly, that the emotional response to having set a time for the election in the bill, that we took to the floor was because it lent itself to an easy description as a quickie election. We were told in the debate, of course, that the median time for running these elections currently is about 45 days.

What we tried to do to accommodate the desire for a reasonable time period for an employer to prepare a campaign was to put in a 35-day notice of organizing and provide that no election will be held before that 35 days had run. And then we got into that confusing period, and Senator Hatch, who has an alert and creative mind, went from "quickie" to "instant" election. We realized we had a new problem, same problem, new word, from "quickie" to "instant."

Now, the objective is not to spring anything on anybody at any time, but, when a sufficient showing of interest in an election is there, to have the election and know the time within which the election will be held.

So we are struggling to obtain that objective in a way that will not give the appearance again of unfairness or springing anything on unsuspecting audiences.

Senator LUGAR. I appreciate that. I think that is a question that ought to be pursued because it seems to me at least the gist of what I am saying in my statement today is that the most important aspects are to make certain that the unit and eligibility matters are determined before the election is held.

It seems to me the preoccupation of debate and the emotional triggers on both sides may have been created by the thought that somehow or other the delays that are now involved in most cases can be done away with simply by arbitrarily setting time, whether it be 21 days, 35, 45, 75.

I think what I am suggesting is that far more likely the delay, even if the schedule was expedited, will come in the litigation or at least legal procedures that follow after the fact of the unit participation.

The great fear that I have and I expressed during debate is that the problem for the very small business in this situation is perhaps the lack of that legal expertise that is available to others or an exorbitant cost, really, in obtaining this; so there is some degree of justice and a perception then on the part of the small businessman that these expedited schedules are very likely to ground him or her into a very rapid situation without any relief.

Now, I think this is a problem the committee could wrestle with successfully, but without being preoccupied with the specific idea of days, and with very careful thoughtfulness around the points Senator Hatch raised about the notices, the petitions, the timing of these things, so that unintended results do not occur.

That might make the elections even swifter than anticipated.

The CHAIRMAN. You did have some amendments, Senator Lugar, that dealt with specific time periods.

Senator LUGAR. I am sure in the course of debate that I presented a number of amendments that dealt in that area and in others. I do not recall, nor did I bring with me today, Mr. Chairman, any of the amendments that I introduced; but clearly that is an area that I addressed, and so did Senator Hatch, and others, during debate.

The CHAIRMAN. Well, there were two that dealt specifically with time periods. One provides that elections will be scheduled by the Board no later than 45 days after filing of petition and will be held within 60–75 days after petition.

The other provides that the election will be scheduled no later than 30 days after filing of the petition, and that the election be held between 45 and 60 days after filing of the petition.

From all experience, that seems to be clearly within practical time limits.

Senator LUGAR. I would agree that those are practical time limits. And today, suggesting 50 to 80 days, I do not mean to confuse the issue further.

What I am simply saying is, eligibility and unit requirement needs to be expedited first before we get into elections—I do not think that it is useful to get into an expedited election schedule and thus trigger all of the emotions that are involved with the perception that justice may be denied the employer who does not have legal resources, really, to make certain that his day comes.

The CHAIRMAN. That is another issue. There apparently is the feeling that some employers are not equipped to deal with the situation. That is dealt with, of course, through another amendment, which we have offered.

Senator LUGAR. I appreciate that.

I was not comforted necessarily by that amendment in its adequacy, as I looked at it through the eyes of small employers.

The CHAIRMAN. We thought that would be the one that would make it clear to you that we had a good bill. It did not work that way. The ombudsman idea did not appeal to you?

Senator LUGAR. I do not think it is going to be adequate for ordinary small businessmen.

The CHAIRMAN. What would be? If he really feels that he is shut out of professional help, how would you handle that?

Senator LUGAR. Without any doubt it is an aid. I do not want to draw some overly dramatic situation because each one can think of any number of cases; but the difference in psychology, it seems to me, between the small businessman and the large businessman, boils down to the fact that the small businessman may have mortgaged his house, his furniture, and everything else to get a bicycle shop going in the garage; and he has got his whole neck out on the line.

Now, at this point, an ombudsman may not be adequate for him, and he better probably go to the very best legal counsel that he can find, that the remainder of his money can buy, because if he loses his business, he loses everything.

The large-business employee probably does not suffer that. He may have reservations from day to day and feel a sense of unhappiness that he did not prevail, but his life is not ruined; he is not facing creditors in bankruptcy court.

The CHAIRMAN. Well, from the description of this particular business, I would guess that it clearly would not be covered anyway, based on the description you just gave.

Senator LUGAR. I think often it would be, even after the codification of the previous NLRB stipulations and all, I find a good number of small businesses that do unfortunately meet the criteria of being covered by NLRB; and as the committee suggested during the course of the debate, I think, though, and I have not suggested this today—and this is even more debatable, but clearly the committee can alleviate this entire problem, I suppose, by exempting businesses underneath a certain number of employees from all situations. Clearly, that takes away the problem.

Senator RIEGLE. Would you yield at that point? I think this illustration is an important one.

As I understand, the one that you have selected—the fellow operating a bicycle repair shop out of his basement—he would fall under the category of retail trade, and to be within the reach of the law in this area he would have to be doing $500,000 worth of business. I wonder whether you really mean to use that kind of an illustration?

Senator HATCH. Will the Senator yield?

Senator RIEGLE. I will in a minute.

The concern I have is that so often, as I listen in debate to illustrations used to alarm and frighten, I detect a connotation attached that this bill does things that it does not do. This is really quite unfortunate and unfair.

I think it is important that our examples be real ones, honest ones. If we are going to talk about a bicycle shop that does $500,000 worth of business, then I think it should be clear just what we are talking about. Otherwise, we are talking about somebody that is operating something out of a basement and is clearly beyond the reach of the law today, and who would be beyond the reach of the law even as we propose to change it. We ought to be clear about that as well.

Senator LUGAR. I think the point is well taken——

Senator HATCH. Could I interrupt?

We have to be clear on jurisdictional rule also. If he is operating a bicycle shop, that means he is repairing bicycles and doing other things as well, which would put him in a $50,000 jurisdictional limit,

because they would take the lesser of two limits. The Senator has very appropriately chosen one particular illustration. You can get into these all day. I imagine you are talking about any number of 800,000 different small businesses that are—that this act does apply to, and 80 percent of all employees that it applies to.

Senator LUGAR. What I am attempting to do is characterize the type of business that is likely to need legal counsel. This is the question essentially, getting to the ombudsman situation. What I am trying to characterize is psychology of a person who fits into a specific business that is covered.

Now, if I suggest a bicycle shop is inappropriate, I think it is not engaged—the general problem of the small businessman who feels he needs legal counsel at some stage, and he feels it pretty strongly because he may be losing everything in the event that he loses his business, and perceives he is going to have some problems.

Senator RIEGLE. Mr. Chairman, at this point I think it is essential to establish for the record and without misunderstanding exactly what the ground rules are with respect to size, who qualifies, and who does not. I would like, if I may, to ask the professional staff member I have just spoken with, to indicate why the $50,000 figure mentioned by the Senator from Utah is really not a relevant test.

Senator HATCH. As long as he would be willing to submit to questions, I would be glad to have staff explain this.

Senator RIEGLE. If I may, I want a definition, a technical definition, explained by the technical staff. Let me just ask him to do that at this point.

The CHAIRMAN. Mike, stand up here and clarify this.

Mr. GOLDBERG. Mr. Chairman, Senators, as I understand it, the test is the effect of the enterprise on interstate commerce. If an enterprise has a certain amount of business, that is, $50,000 a year in interstate commerce, that is, direct sales, out of State, or direct purchases of supplies from out of State——

Senator HATCH. Or anything that affects interstate commerce.

Mr. GOLDBERG. Or anything that affects interstate commerce in that amount, and the Board can find it, then the Board will assume jurisdiction over that enterprise.

Senator HATCH. That is right.

Mr. GOLDBERG. The Board then uses the gross dollar sales amount as a basis of forming a presumption that the $50,000 in direct or indirect interstate commerce exists, and that is if a retail establishment has $500,000 in gross sales, then the Board will presume that they do $50,000 of that in interstate commerce, either direct or indirect, and the Board will assert jurisdiction. But $50,000 in gross sales would not meet the Board's jurisdictional standards unless all $50,000 of those gross sales were in direct or indirect——

Senator HATCH. That is pure retail sales situation. This is not a pure retail sales situation I described. Everything else, I agree with you on. If you have pure retail sales, a Gimbel's situation, maybe $500,000 is going to apply, or a local department store that does business in interstate commerce, and under the present Supreme Court rulings almost everything does business in interstate commerce, including local restaurants who never intended to entrepreneur their goods or their services, or other matters, beyond the State.

The fact is we do not have to get involved in a bicycle shop—he used that merely to explain the psychology, as Senator Lugar said. I do not want to have a misconception that every little sales group that does repair work and everything else qualifies only under $500,000 jurisdictional exemption. That just is not true.

Senator CHAFEE. I wonder if I could break in? I know Senator Lugar is one of the keymen on the New York City issue that is before us now. I wonder if we could press along with our questions to him on these matters. The bicycle shop illustration—by the way, the bicycle shop means any small operation. It does not mean somebody just selling bicycles.

Let us get on, can we, so he can go?

Senator RIEGLE. If I may, Mr. Chairman, I, too, am involved as a member of the Banking Committee on the New York City loan situation, so Senator Lugar and I both are feeling some sense of need to be there. But I think it is crucial that we pin down exactly who is covered and who is not.

This has been a major part of the debate. I have heard illustration after illustration given during the filibuster and since, which, when one looks at those situations, in fact do not fit the circumstances. I want to make sure that in the case of this review, that every illustration we talk about is, in fact, something which would fall under the reach of the law.

I realize it is tough to pull good examples off the tops of our heads. But if we are going to do that, and if this is going to be a constructive exercise, then I want to make sure we are defining business operations that actually fall within the scope of the law; we should not leave the slightest impression suggesting to a lot of business people in the country, who are afraid of labor law reform but who actually fall outside its reach, that somehow they are put in jeopardy.

I just put into the record at this time, Mr. Chairman, these statistics.

These data from the U.S. Department of Labor's Division of Administration, dated January 30 of this year and tallied nationwide, show the following: 78 percent of all U.S. business under the law today, and as it would remain under the Byrd substitute, is exempt from the reach of the labor law——

Senator HATCH. Break that down as to sole proprietorships, et cetera.

Senator RIEGLE. I will not yield just now. Let me make my statement and I will be happy to yield to the Senator.

Then 22 percent of all business, as compiled by the Department of Labor, is in fact covered. In the manufacturing business, the percentage covered is 31 percent, the percentage not covered is 69 percent.

In the field of transportation, the percentage covered is 16 percent, and the percentage not covered is 84 percent.

In the wholesale trades, the percent covered is 78 percent, and that is a high category. The percent exempted is 22 percent.

In the retail trade, where I assume it would cover the bicycle shop, the percentage of business in this country presently covered by the law, and covered by the proposed law, is 12 percent; 88 percent are not covered.

In the category defined as services, 90 percent of the business in the country identified as working in that area are exempt, whereas, 10 percent are included.

Now, I simply think it is important to point that out. When I asked earlier for the small business definition you are concerned about, you chose to define it by number of employees, and you said maybe something in the number of 100 to 200 employees is the employee test you had in mind.

It seems to me that the concern you and other opponents are expressing, is that there is some relatively narrow band of business in the country that meets your definition of small and that would fall within the reach of existing law; that the same ones of course would fall within the reach of the new law, as the Byrd amendment would pin the current jurisdictions down, making them pertinent, and that they ought not to be covered.

So you are talking, I think, about a very narrow band percentage-wise. We can factor it out in numbers of companies, but any suggestion that we are talking about half the businesses in the country, or one-third of the businesses in the country, or 20 percent of the businesses in the country, or even less than 10 percent of the businesses in this country falling within this narrow range that you are really talking about, this is the focus of what has become this impasse.

The reason I take the time to try to establish that here is that I think so much propaganda has been disseminated—and I do not mean by yourself, but generally in the course of debate—arguments have been exaggerated all around, and we have lost sight of what we are talking about here.

The wave of alarm and hysteria has been set loose, part of it—conscious I might say—to frighten small businessmen presently exempt, and who would continue to be exempt, that something will suddenly happen to them.

In fact, nothing new is going to happen to them. I would hope the opponents of the bill would be frank to concede that, so at least that part of the business community that has been frightened, I think unreasonably so because they are not affected, can understand that they are not affected.

Senator HATCH. Would you care to respond or I will be happy to?

Senator LUGAR. Let me make a quick comment.

Obviously, we could all go into the rhetoric of the debate for sometime. I just think it is necessary to say the small business people in this country are able to perceive their problems with this legislation. It does not require anyone to create hysteria on their part.

As a matter of fact, in unrivaled numbers, they have been pointing out to me and other Senators their difficulties.

Now, I am perfectly willing to grant statistics that are involved here, and further to say that Senator Riegle has made an important point that there is probably a band of businesses, going beyond the numbers that are now not covered, who feel a special jeopardy from the legislation. That, I think, was the particular focus of the chairman's question on the legal aid situation.

What about those businesses which are somewhat beyond the limits of being exempt but are still, by most fair judgments, relatively small? How do they meet their legal needs?

What I am suggesting is that probably in the case of most, the ombudsman would not be a satisfactory alternative given the risk they feel, which is not hysteria, but perceived as quite material.

The CHAIRMAN. Well, I appreciate that statement, and I wish that I could agree with your conclusion that the masses of small business people truly perceive, as you say, their problem. As indicated by the mail that reaches me, they perceive a problem that they do not have, based on misperception of the results of this bill if it were law.

I had literally thousands of communications deploring the fact that this bill, if it were law, would make it automatic, that they would become a union shop which, of course, we know, is not the case.

This perception is one of the problems. That is not reality. That is why this particular discussion is useful.

Any clarifying discussion as to what the approach of the new law is will be helpful, too.

Senator HATCH. If I might add to Senator Riegle's comment.

What Senator Riegle has brought out is correct. There is no question that 76 to 78 percent of all business in our society is not covered by this act. I think what Senator Lugar has said is correct, too, that there may be some of those who would not be covered by this act, who may be concerned about this bill when they really do not need to be.

But, as has been the case throughout this debate, that is only the half truth because we show through the same Bureau of Labor Statistics that 72 percent—that all the 78 percent basis were sole proprietorships or that employee was the same as the owner, which would not be covered automatically anyway. And, in addition, 76 to 78 percent of all employees in society are covered——

The CHAIRMAN. Can we continue this on our time? We are intruding now on Senator Lugar and Senator Melcher.

Senator HATCH. I feel we should not allow half-truth to be on the record. We should get that clarified and go from there.

Senator LUGAR. Thank you very much, Senator.

Senator CHAFEE. Can I ask Senator Lugar one quick question, if I might.

It is my understanding from the point you raised here, the objections, as you went through the specific thing, the equal access, make whole and so forth, is it your feeling that any bill you would support would have to require some what we might call reforms on the other side; in other words, some constraints on what you consider to be union abuses?

Senator LUGAR. Yes; I listed three that might be in that category, but I think that is an important point to make. I think it must include those reforms.

Senator CHAFEE. Suppose a bill came out of here without equal access, with make whole perhaps out of there, but taking care of some of the situations that I think all of us feel deeply about, for instance, illegal discharge—an employee now only gets 100-percent wages of net, that is net between whatever he earned and 100 percent of his wages as opposed to 150 percent of his wages which seems to be terribly fair—anybody who is earning more than 150 percent of his wages—Blue Cross and so forth.

I assume you would support a provision such as that but, on others in here that are similar, you would require some balance on the other side?

Senator LUGAR. Yes. I am perfectly willing to look as an individual member— I make no claims for anyone else other than myself.

Senator CHAFEE. We appreciate that.

Senator LUGAR. This is testimony I presented today.

Senator CHAFEE. You are a very influential Member of those who voted against cloture.

Well, I hope we can call on you as we proceed here to get some further thoughts, which you outlined briefly, and I know you did not have much time—you might stay on the other side of this issue, but I think it would be helpful if somebody from your staff could give us further ideas in what you consider to be the reforms necessary on the other side.

Senator LUGAR. Thank you very much.

Senator HATCH. Thank you, Senator.

The CHAIRMAN. Senator Melcher.

STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. First of all, I want to testify as a Member of the Senate and one who participated on the floor in colloquy and debate that transpired there concerning this bill. I wish to very clearly testify that it was my intent as a Senator that the provision contained in the Byrd substitute, of which I am a sponsor, that deals with who is covered by the National Labor Relations Board, would establish as a statutory jurisdictional test the test that exists now. If there is any confusion on what the test is now, we can clarify it in language in the bill, so that it is $500,000 gross business for retail stores, restaurants, hotels, motels and repair shops of any kind, and not have this silly difficulty among Members of the Senate or, for that matter, people that would be involved later on. That was our clear intent.

That is the procedure that is generally used now, a $500,000 gross business test because that is something that everybody can see. Everybody knows what it is. There is not any small business that operates that does not know what their annual gross business is.

It is a figure that could be picked up. If Senator Hatch has a problem with the $50,000 test, whether or not a business is involved in interstate commerce, I suggest to this committee that they clarify the language and make as a positive statutory requirement a continuation of the NLRB policy of looking at gross business as the yardstick. I think it is that simple.

I think that is what small business people throughout the country want to know. That is the first point of my testimony, Mr. Chairman. I only bring it up now because it relates to this questioning, and Senator Lugar's testimony, and comments made by Senator Hatch.

I first of all want to point out that when this Congress started, and Senator Riegle and myself and Senator Chafee and Senator Hatch and 14 others were first term Senators, and we were assigned on a temporary basis by drawing out of the hat, mind you, where we were going to sit for a while on committees, this was the committee I was assigned to.

I did not ask for this committee. I asked for the committees that I now have. But I had the pleasure of sitting with this committee for a period of weeks. I had the opportunity of being present here in the hearing confirmation of the new Secretary of Labor.

My part in that was to ask the nominee, Mr. Marshall, what was he going to do about OSHA. He confessed he did not know much about OSHA's problems, but if it was felt to be a problem, and he judged it was a problem from comments he received from some of us that day, that he would do something about it.

I am delighted that they have done something about it. I do not mean to say that everything is straightened out, but Eula Bingham has taken hold, struck down a whole battery of unneeded regulations, has taken away this nitpicking attitude, has stopped looking at small business inspections as something that is more important than going into industrial shops. Mind you—at least it seemed so in my State. Now we are getting OSHA to do the things that we envisioned when Senator Riegle and I voted for it in the House and Senator Williams, the chairman here, carried it in the Senate. Now we are getting back to where we belong with OSHA, in carrying out the intent of the law, rather than nitpicking.

I bring that up now because I think there is a lot of nitpicking about this bill.

Now, I want to first of all, compliment this committee for paying attention to practices and red tape problems that involve single individuals, workers who are illegally fired, and have to go through a lengthy procedure. It is time consuming, sometimes 2 or 3 years before they get a settlement, before they get their back wages. Sometimes they die before they get it. I do not think this Government is too big or too busy, ever, to pay attention to unjustified inequities in the laws we pass and the procedures that develop under those laws, in this case before the National Labor Relations Board.

I think we have known of this, that there was a problem. I think Senator Williams has documented that problem through numerous individual cases that have been inserted in the record for all of us to read and to understand how unfair it is for some individual citizens of this country to not get the relief that they are entitled to under the law.

I think we lose track of this, that this is a Government that has a responsibility to individual rights, and it is our responsibility to take the time to go through the travail that it causes to make those corrections.

At this point, I do not think anybody argues with this. I think everybody says that it is necessary and needed and that it is meritorious; but we lose track of this part of the bill—and that is not the reason the bill is in trouble. We lose track of that feature in the bill by getting into the arguments on other features.

I come here as a person who has had experience in small business. For 20 years, I practiced veterinary medicine in Forsyth, Mont. We had a veterinary clinic, my partners and I, and we employed people and we sold drugs to ranchers that they needed, and insecticides and the other supplies that are commonly sold through a veterinarian.

We were not unionized. I never thought of being unionized. Who would want to unionize our employees?

All of a sudden, my former colleagues in small business in my home town of Forsyth, Mont. have been scared. They have become very upset and they are very confused when they read of what possibly might happen to them as a result of this bill. No wonder they are scared.

Here is one editorial; the name of the publication is not significant; but listen to this, speaking about this bill. It says:

"The new rules guarantee the bankruptcy of every mom and pop store in the Nation any time dad does not do what a union member wants. Under this proposed law, mom and pop could be ordered by the staff of NLRB to pay up to double back wages. . . ." and so on and so forth.

Who would not be scared? Every mom and pop store in the Nation is facing bankruptcy—Who would not be scared?

Why would I have about as much mail on this bill as I had on the Panama Canal Treaties? It is a bread-and-butter situation for small businesses when they read such descriptions of the bill. They are confused and they are scared and they are very upset.

Now, as a result of reading these letters from my constituents, taking the telephone calls and discussing it with them personally on the phone and meeting with groups of them in meetings in Montana, I have come to the firm conclusion that, first of all, that the Senate bill as it was presented should not have caused those concerns. But since they had those concerns, it was necessary to be very clear and straightforward.

The Senate substitute, the Byrd substitute has solved those problems in the three areas that confused them and scared them the most.

First of all, are they or are they not going to be subject to jurisdiction of the NLRB? Will we change it all of a sudden? They are not subject to it now, but will the National Labor Relations Board change that $500,000 down to something lower so all of a sudden they are hooked into it? We should take care of that.

I have made my testimony earlier; if that needs to be clarified, clarify it.

The second point of concern for small business, was, quickie elections. What does that mean?

"Quickie elections." I became convinced through the colloquy with my colleague, Senator Hatch, from Utah, that if there was some concern about the House bill that really has no bearing here, we are well aware, at least I am, that whatever the Senate passes, in whatever form the Senate passes this bill, that is going to be the form that becomes law; because nothing else is going to become law; and there will not be any watering down in conference. The House would be well advised to take whatever the Senate passes, with no conference, because there should not be any watering down.

The "quickie" elections, I concluded, are more likely under the existing procedure under present law and Board rulings. Senator Hatch convinced me, absolutely convinced me, that the Board set the time of elections between 12 and 42 days, at their own discretion, in 82 percent of the cases—12 days might be a quickie election—18 days might be a quickie election. It would mean that to me if I were still in business. I would call that a quickie election. What is reasonable?

I was convinced that 30 to 35 days was reasonable. That is what my small businessmen told me, and small businesswomen, too. That is what they told me. That is what they wanted. I really have no comfort as a U.S. Senator, as a veterinarian, as a citizen of this country, in allowing so much authority that might affect me to be discretionary with the Board or a commission or an agency. I seek my relief as a citizen through the Congress.

The Byrd substitute takes care of this.

There is now some question on the 35-day notification. The substitute provides that there would be no election quicker than 35 days after the employer has been notified that there is an effort for union organization. If we want to quibble over, well, a minimum period after the Board gets a petition, I have no real problem with that, as I explained to Senator Hatch before on the Senate floor. If that is a problem why not say no sooner than 35 days from the time the employer is notified by the union there is going to be an organization drive and also provide a specified time after the petition is filed with the Board? I take comfort in that.

Senator HATCH. Would you yield for one correction?

Of the elections 82 percent are resolved by the Board within 12 to 43 days or 44 days because the parties voluntarily agree.

Senator MELCHER. That is right, I do not want to take that possibility of an agreement away from them. That is provided for in the Byrd substitute.

The CHAIRMAN. We are halfway through a vote on the Tower amendment. We will have to break.

Can you come back?

Senator MELCHER. I will return.

The CHAIRMAN. Senator Chafee, we will return.

[Brief recess.]

The CHAIRMAN. Let us come to order, and return to the very, very helpful statement of Senator Melcher.

Rather than waiting for other members, John, I think we might——

Senator MELCHER. All right. Thank you, Mr. Chairman. I will continue.

I was on the question of election, the period of time for holding an election. I want to be very clear on that. First of all, as is provided in the Byrd substitute, the employer may be notified by the union organizer that an effort for unionization of that employer's employees has started. In no event then can an election be held quicker than 35 days from that time, unless it is mutually agreed to by the parties, that is, the union and the employer.

And I think that is proper.

Furthermore, Senator Hatch has raised the issue of how about the time after the petition is filed by the union, with the NLRB. Could a union wait until the 34th day, and then file the petition, and then the election be the day after tomorrow?

That is not possible under the mechanisms of the Board, because the Board has to print the ballots, and has to find somebody to go out and referee it. They have to post a notice at the employer's shop or place of business, et cetera. So the election could not happen the day after tomorrow, in any event.

But nevertheless, the debate in the Senate is being closely followed by both the media that cover it, and the individual employers, and employees that are interested in the progress of the bill. This concern has now been raised, and to clarify that point, I think it is significant and wise, if this committee would consider modifying it, to establish a definite time frame, also, after the time the petition is filed before an election can be held, whether that should be 10 days, 14 days, or whatever.

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But the governing feature should remain, no election would be held quicker than 35 days, after the written notice to the employer, and if they so choose, the parties could select a shorter period of time.

I think that is proper and possible, and I commend that to this committee for their consideration. I suggest the added feature of establishing a time frame, in conjunction with that, in relationship to when the petition is actually filed with the Board.

I was told by several small business people in Montana, that if the election were held, oh, say, in 21 days, if their notice was only 21 days, they felt that there could be times in the course of their business when 21 days would be much too short.

And I said "Well, what do you want. What do you think is right?"

And I recall very vividly, of what I was told by one of the department store owners in Montana, whose employees are nonunion. He said we may have to face it. There has been no organization effort in our store yet, but we may have to face it. And if it came, for instance, between the period of Thanksgiving and Christmas, he told me when their sales are so rushed for 3 weeks, "If that were that time frame, we would find ourselves so busy with our ordinary merchandising during that period of time that we would not have any opportunity, really, to collect our thoughts and to decide how we are going to face this; whether we are going to encourage it, discourage it, or what position we are going to take. We would be in a bind."

I asked, "What is the right time frame?" He said it ought to be 30 or 35 days. And he said, on that point, he would be satisfied. "I do not intend in any way to dissuade the rights of my employees, if that should be their choice," he explained. "I may have my side of it, and I may want to present my side of it, but I do not want to get into this bind, of having to make these considerations at a very critical time during our annual Christmas sales which determine whether we have a successful year or not."

He said, "Frankly, what we sell between Thanksgiving and Christmas is extremely important, and it means a profit or a loss, as a rule, for our business for a particular year."

All right.

If that is his concern, and if he thinks 21 days is too short—under the existing procedures of the Board, he might well be faced with 21 days.

The substitute bill takes away that doubt. The substitute gives no discretion to the Board to establish it quicker than 35 days, unless there is mutual agreement between the two parties, the union and the employer.

I think, as I discussed it with him, subsequent to this provision being incorporated in the substitute bill—that he feels more comfortable not only about the bill, as it is being discussed here in the Senate, but, possibly more comfortable in that he thinks that—passing the bill or not—that that will become a time frame, the 35 days.

I will later get to my conclusion on whether or not these changes have changed the minds of the small business people. But I want to get to another point that concerns them very much, at least my people—that is the basic question of access.

Must an employer grant to a union organizer the opportunity to come on to his property, and to attempt to convince his employees to become organized, when the employer is of the contrary opinion?

In other words, if he is opposed to unions, must he permit the union organizer on his property?

Well basically, he would think, no. He does not have to.

I said, in these discussions with small business employers when we got to this point on access, I said, "Do you understand the present law?"

They said, "No." They do not understand the present law. That is a point that would have to be determined and explained to them, because they do not know the present procedures.

I advised them, that if that is their concern, and they wanted to protect their rights in that regard, by all means engage an attorney, knowledgeable in the labor law, to advise them of what their rights were.

I do not find any comfort in having to tell a constituent that in order to understand their basic rights, on a question of law, that they better hire an attorney. It is often necessary. I am sure all of us find it often very necessary to frankly and candidly give our constituents that advice.

But I have never said that to any one of my constituents, but that I have always had the sinking feeling, and they look at me and say, "John, what in the hell are you doing to us." That is particularly true when you get to the small business people.

I was there. I was there for 20 years. My wife kept the books. I ran the the bank deposits back and forth to the bank and kept track of the accounts receivable, to make sure that we had a bank balance that we were not overdrawing. And my constituents small business people are faced with that, day in and day out, just as I was faced with it for 20 years. This is the way small business is. They are never caught up.

My concept of small business may be a lot smaller than a lot of other people's, but I am relying on my experience in Montana.

When they talk about pop and mom stores, I know what they are talking about. And I know that they do not want anything else laid on them. That is a big concern with the bill.

Is this going to lay something more on us? Something more we are going to have to put up with? Some more red-tape? Some more confusion?

Well, in these two areas, setting aside the vast question with very small businesses, when they are subject to NLRB jurisdiction, setting that aside—the next two points that do concern small businesses that do gross over $500,000 a year—I have found, through the letters and the calls and direct discussions with them, are these two points: time of election and access.

I looked at, and made myself aware of what the committee's bill, as reported to the Senate floor, would require on access. I was not too dissatisfied with it, though I realized that it was not completely comfortable, even when thoroughly explained, completely comfortable to small business people. It would raise significant points.

I would say—going back to my friend who owns a department store—suppose they do carry on what is called a systematic campaign against the union? What does that entail for them?

It would trigger access, under the committee bill. It would require access for union organizers to their property. And they said, "well, we would not want to trigger that. You cannot run a store with union

organizers coming, distributing leaflets to employees, talking to them when they are trying to take care of customers. It is an impossible situation. We would have to avoid it."

But they might have a problem, a doubt. You know, they read these things, editorials like the one I quoted. They doubt. Somehow they would trigger access.

So I applaud, I very much applaud, the substitute bill and its provision on access. It is straightforward.

For the retail establishment, the substitute says even if access is triggered, we would permit the union organizer to organize, to influence the employees, to discuss this with the employees on work premises during worktime. They understand that. Small business people understand that. That is what they are asking for.

It can be argued that they do not need even that. Just leave the thing alone. Just leave it alone. Kill the bill.

That is what they have been asking us to do, kill the bill. Leave it alone.

Well, where are they on access, then, the small business people?

Well, in the first place, they are in a quagmire. It is an attorney's heaven. It is clear uncertainty, based on case law, Board rules, which may change.

Listen to this. I quote a guiding case on access:

> The second circuit held that nonemployee organizers should be permitted access to employees on the employer's premises, where "no effective alternatives are available to the union in its organizational efforts." On the other hand, there is another line of cases indicating that where there may be no circumstantial disparity and opportunity, but the employer's conduct in intimidating employees from exercising existing communication opportunities, the Board is required not only to clear up those avenues, but also to provide the union with others.

What does that mean? If you do not know what that means, try taking comfort in a later case, when the judge ruled—

> But when the inaccessibility of employees makes ineffective the simple attempts by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.

What does that mean? If it means anything, it means "access."

Nobody that I have ever talked to, in Montana, ever heard of the Stevens Co. settlement on access.

I hope they never have to hear it. I hope they never have to hire an attorney to become familiar with what the Stevens settlement on access is.

I do not think they can afford it, No. 1, because they are not just going to hire any attorney. They would have to hire an expert labor attorney, if they want to understand their rights on access. And they are not going to do it.

So they are going to be accepting what the Board tells them. And I find little comfort in that. I think the National Labor Relations Board is expert in labor law, concerning the matters that come before them. I think that their field of labor law is a very narrow field, and that there are few attorneys available in this country to advise a small employer in Montana what his rights are on access.

Yet I find, in discussing with them, the provisions on the access in the Senate substitute that they take some comfort. First of all,

I ask, do you have ten people on the payroll? No; frankly, you could not imagine how many small business people in Montana do not have 10 people on their payroll.

Well, you are exempt, by law, from ever considering access. The employees and the union can get together somewhere else. There just is not any requirement that you consider access, Mr. Employer, in that case.

But what about my department store owner who worried about the union organizer coming in and organizing while the business was going on? If the substitute becomes law, it is so clear that you do not have to hire an attorney to understand it. It becomes clear. The bill says no access, even if you trigger it by some systematic campaign against the union.

If you do trigger it, do not worry about it. If your concern is can they come on your property in areas of work, and during work times, because all it would take would be one call to the Board, one call to the union, one call to the State Federation—if it is AFL–CIO—one call to Helena—that is our capital—and you will know that you can say, "No one comes in during hours. That is it."

They are not opened after hours. Access is out. They can understand that. So from these three areas, the question comes down to whether small business people would be better off with a bill, or without a bill.

I am telling you—I am telling you, from my standpoint, from my experience, if I were in business yet in Forsyth, and if I was concerned about being unionized, I would want the bill, because the points would be clear, and I would know where I stand.

That is what I tell my small business people in Montana.

I might ask them to believe me, very candidly. They are skeptical. Very candidly, they look at me and say:

John, do you really understand this bill?

I have read all this stuff in my Trade Association Journal and from the Chamber of Commerce, and what have you.

They ask me:

So you really understand this?

And I tell them:

You bet I understand it. I have had to understand it. My position here in the Senate is to represent you.

We have a broad cross section of various groups in Montana. Unions are part of it, a small percentage. Cattlemen are part of it, a bigger percentage, along with farmers. But matching everything, matching everything in size is small business. I know what my responsibilities are. It is to understand this legislation. It is to equate it in terms they understand, from their viewpoint, whether or not they believe me, that they will be better off with the bill than without it.

I am not sure I have convinced them. I am not sure, because the momentum is all the other way. But I want a bill. I want a bill for them, because I know the quagmire it is now under the existing law, court cases, Board rulings.

I have not found a small business in Montana that cares about debarment. I have not found small business that really cares too much whether there are five members on the Board or seven members—as was recommended by Senator Taft, Sr., back in the forties.

They all admit, all of them, that where an individual employee has an extreme difficulty in obtaining the proper remedy of a basic right under law that we should take care of that. That does not happen very much in Montana, but they all admit to me, of course, that the individual employee should have his rights protected in a way that does not take years for him to gain his or her rights.

I am a little bit disturbed that I find some of my conservative colleagues, here in the Senate, who looked at the issue of Panama pretty much the way I did, and voted against the treaties, who looked at some other very sticky gut issues, like abortion, the way I do, and vote the same, who continually join with me and with others in the Senate on those very few, happy days when we really can strike down some regulations and red tape that are worrisome and burdensome for citizens of this country—have now decided that despite all of the similarity in our viewpoints and our efforts here, on these, what I consider the right side of the issues, are now attempting to continue the status quo under the labor laws. It is disturbing to me that they want to do this knowing that the red-tape, the confusion of Board rulings, the confusion of court cases that determine the practices of the Board, the requirement to really understand what your rights are under the law, by having to hire an expert attorney, should be maintained when it is within our power to do some very meritorious things that affect, first of all, individual rights of some people who have to put up with a lot of red tape to gain what they are entitled to under the law, as individual citizens.

And second, to clarify for small business just where they are at, in case the nonunion employer is going to be faced or confronted with unionization efforts. I think they are entitled to a better shake than no bill at all.

I recommend that this committee come back with a bill promptly.

I would add that some clarifying language, that has been pointed out in the debate on both the time of the election—and the filing of the petition with the Board—and clarifying the language, if necessary, on when access is invoked, and when it is not invoked.

The CHAIRMAN. Thank you very much, Senator Melcher. Your statement has been immeasurably helpful to those of us who have had the opportunity to hear you. And it impresses me that it would be helpful to Members that obviously could not be here, and to Members, of course, other Members of the Senate—not members of this committee—I hope we can find a way to get your statement mimeographed and circulated to Members, if that will be all right with you.

Senator MELCHER. Yes; it would be fine with me, Mr. Chairman.

The CHAIRMAN. Excellent surgical procedures here of understanding——

Senator MELCHER. In my area I am a veterinary surgeon.

The CHAIRMAN. Well, you have applied it in this legislative world, and this issue, and gone right to the minds and the hearts and the emotions of the small business community, that we are all concerned about. Many share your concern that they have not been led to understand the bill, as it is, that they have perceptions that are not accurate, and this is an enlightening statement you made.

Thank you very much. And I know that in order to make this, you altered your travel plans. And we are doubly appreciative that you put yourself out again in such a constructive way for the business of the U.S. Senate.

Now, I have no particular questions.

Senator Pell, I am glad you have joined us. I know you could not be here to hear Senator Melcher, but I would recommend Senator Lugar's earlier comments. The record will be available shortly.

Senator PELL. I look forward very much to reading the testimony, and I gather from the tenor of remarks, that the Chairman just made, that Senator Melcher is emphasizing the point that this thing is painted as being a "bogey bear," much bigger than it really is. And it has become almost a symbol, I think, actually, maybe, on both sides.

And I think when you actually examine the merits of the bill, you realize it does remove inequities. It does have very, very real merit. I believe it is needed, and speaking from my part of thec ountry, I think that it will have overall beneficial effects, equalizing the competition.

Senator CHAFEE. We certainly appreciate the thoughtful attention you gave to this. It just seems to me that what you have said, in essence, is that the opposition has either been ignorant, or willfully deceptive, and that the small business community just does not understand the benefits that are in this bill for them.

Well, that may be. However, there are some pretty thoughtful people who voted against cloture, and went through the longest series of cloture votes that I understand the Senate has been through.

And I might say I voted for all those cloture votes. But the proof of the pudding was that cloture was not invoked. And so any type of bill, and I think, as I recall, you were here during most of the presentation of Senator Lugar which, of course, itself, was a thoughtful statement, and so it seems to me if we are going to get anywhere with a bill, we have got to have some specific changes, if this bill is going to go anywhere.

And as you pointed out, the equal access provision is very—is a disturbing factor. And I was not quite sure what your recommendations were regarding that.

As I understand it, in the end, it was sort of a complication of equal access. And could you touch on that a little more, because frankly, unless this bill is changed, nothing is going to change. And I think you will find plenty of people who voted for cloture, who will say we are not going to go through this again unless it is a very radically different bill than came out of this committee before.

Senator MELCHER. Yes. I would be glad to clarify that, and enlarge on that rather general recommendation of mine.

First of all, Senator, I think ignorant is a harsh word. And I would not want anything that I said to be construed to imply ignorance.

From the standpoint of the small business person, it is not a question of not being alerted to the bill. It is a question of being alerted with either information that is based on another bill, perhaps a House bill, or alerted on the basis of some confusion on the part of whatever trade organization or the Chamber of Commerce, or other source of information that described the bill to small businesses.

Second, it goes beyond that. There has never been much information disseminated, as far as I can tell, to small business people in Montana and, I suspect, all over the country, that the Senate substitute in itself was redrafted specifically to get at their concerns, and therefore, the bill that was the subject of cloture, that the attempts to invoke cloture and to get on with the passage of the bill,

was surely not on the House bill, and not even with the committee's bill, as reported to the floor.

But on the question of access, the current law is confusing. I only read two very short paragraphs out of those two leading cases involving access. Those court cases were attempting to weigh the opportunity for the employees to understand what the union would mean to them if they became organized, versus the rights of the employer to say no, you cannot come on my property. That was the substance of these court cases.

The question then is, will not a union organizer have pretty darn good access to a small group of employees. The substitute bill says, in the case of the employer that has less than 10 on the payroll, that it goes without a doubt that the union will have plenty of opportunities for access through other procedures such as letters, or just knowing individual employees, perhaps through mutual friendship.

And that would be the case, as I visualize it, in our communities in Montana, if an attempt was made to unionize in one of the small nonunion businesses.

I think the committee could well look at whether that same opportunity, for the union organizer to communicate with the employee, does not also exist in cases where the business has 15 or 20, or some other number, of employees. I think the committee could look at that.

I find no confusion in the case of the language in the Senate substitute, where it says that access will not be permitted in any circumstances during work hours, at workplaces. I find no confusion in that.

But perhaps I have overlooked something, because it has been the subject of debate on the Senate floor for some time after the substitute was introduced.

If there is some confusion, you know, will—some little nook in the supermarket, where they can go to get a cup of coffee, will that become a place for the union organizer or two union organizers to plank themselves down in that little nook, and stay there all day to talk to employees as they get a cup of coffee?

That, in my viewpoint, would not be likely to happen. It would be probably a physical intrusion on the area. There is not enough room for two union organizers just to plank themselves down and wait there for the employees to come in for a cup of coffee, assuming that would be construed during nonwork hours, that they were having a cup of coffee.

I do not know, but I think that point can be clarified to remove any doubt on that. I do not think it would be advantageous for the union organizers to intrude in a small area, during just a routine procedure, where an employee has the right to go back and get himself a cup of coffee, or a Coca-Cola, or something, and then go back to work.

And that might be an area of confusion. I think the committee could well look at that, at these points on access, and clarify them.

Senator CHAFEE. In other words, you feel that access, your form, some form of access—the other side of the coin is the one presented by opponents of the bill, and those who were in the cloture, who were—there really was not much yield. It was against equal access.

I do not care whether it is in nonworking spaces, whether it is in parking lots, or cafeterias, or coffeebreak places, no. No.

Now, you think you are opposed to that?

Senator MELCHER. I am opposed to what?

Senator CHAFEE. You are opposed to no access? Or I will put it in the affirmative. You would like some form of equal access?

Senator MELCHER. I would say with a small number of employees that it is impractical. It is impractical to attempt to organize them at the store or the establishment, and that almost any means, with such a small number of employees, would interfere with the operation of the business, and is something the employer should not have to put up with. It is an interference with his business.

On the other side of the coin, with a small number of employees, the union organizers do have access, through other means, through means that they set up—through letters, through direct contact at other than the place of business, and——

Senator CHAFEE. So, therefore, you would——

Senator MELCHER. I am for, I am for what is in the Byrd substitute that rules out access for a small number of employees, first of all, because of——

Senator CHAFEE. That is the 10 or less?

Senator MELCHER. That is 10 or less. And I suggest that perhaps that could be increased, because the same opportunity for a union exists with—where the people on the payroll are greater than 10.

I do not know the number, but surely it might go up to 20.

Senator CHAFEE. What I consider a typical situation, of our direction, which would be a machine shop of, say, 50 people, in which the boss is both the most skilled machinist in the place—he started as a machinist, repairing machines, and build up a business. His wife probably is out in the front office, bookkeeping, or his daughter-in-law, or somebody else. He is in and out of the shop constantly.

And, now, what would you do? Would you have equal access in a situation like that? And let us say there is a little room for coffee.

Senator MELCHER. A little room for coffee?

Senator CHAFEE. Well, yes. Let us say 12 by 15, and they can drift in and get coffee.

Senator MELCHER. I think on that point, if—first of all, if the employer wants to trigger access, it is still his right not to trigger it.

Second, I would prefer that the guidance for it be in legislative language, rather than leaving it up to the Board to draw up the regulation, the guiding part should be is it or is it not an interference with the business being transpired there.

I think in some instances, it would be.

Senator CHAFEE. Let us say, in our situation, it would not.

Senator MELCHER. The employer said it would not be?

Senator CHAFEE. The situation is the union organizer stayed in the coffee room. It would not be an interference with business, and clearly not in a working space.

Senator MELCHER. Then if it was not an interference with his business, and he did trigger access, I have no objection to it.

Senator CHAFEE. Because he went out of the shop himself, and discussed union activities?

Senator MELCHER. Because he went out of the shop and had a systematic campaign against the union. And if that is not clear, I would advise the committee to clarify what a systematic campaign is.

But I understand that a systematic campaign is to be well established—where he takes time during work hours, on the property, on his place, to systematically discuss with each employee, each of his employees, why he is opposed to the union, that is a systematic campaign.

Now, that is my understanding of that term. But if that is not clearly enunciated by procedures of the Board, which we are relying on in this instance to establish what a systematic campaign is, then I suggest that also become part of the direct language of the bill, and become part of the statute.

I do not view a systematic campaign as casual conversation, usual conversation, on the premises, that an employer might have with his employees, even if it is about the union.

Senator CHAFEE. It would have to be a preplanned systematic campaign in which he was going to speak to every employee, and 90 percent of the employees? Something like that, in other words?

Senator MELCHER. Clearly he has mounted a campaign against the union, and he is doing it at the workplace, during the work hours.

I do not think that is likely, by the way. I do not think it is likely.

Senator CHAFEE. Likely?

Senator MELCHER. I do not think it is likely that an employer will mount what is a systematic campaign. I have asked some of the employers in my State how this works, and notably, one, a nonunion employer of 200 or 300 people, whose workers have attempted during the last 6 or 8 years to be organized two or three times. I have asked him how he handled it, and what he thinks about access.

These provisions of the Byrd substitute satisfy him, because how he has handled those attempts by unions to organize his—employees—those unsuccessful attempts, has been a planned arrangement of direct mail to all of his employees, stating his side.

He sees no opportunity to address them, nor does he want to address them at a meeting at the plant, and during work hours.

Now, other employers may have a different attitude. But I think that if there is any question of what a systematic campaign is, then I would suggest to the committee to establish it in the bill, because it is very rigid, as I understand. I think I understand it correctly.

A systematic campaign is nothing casual. It is a very deliberate act, or series of acts, planned out in advance by the employer, to discuss with each and every one of his employees, that there will be voting in the election, and why he opposes the union.

Senator CHAFEE. As you recall Senator Lugar's testimony, he suggested certain things that he felt had to be eliminated from this bill at a minimum. But he also went on and suggested certain, what you might call counterbalancing reforms on unions as regards unions, some what he felt to be abuses that unions had made, that reform should be made there.

Do you have any—would you feel that makes the bill more palatable?

Senator MELCHER. Well, I am certain it would. But I am also certain that this is such a narrow bill, with very limited applications—especially in the substitute—what application there is is advantageous to small business in the case of access and time of election.

Senator CHAFEE. That is disputed.

Senator MELCHER. Well, it is disputed, but I have to look at it from my point of view as described to me by small business employers.

First of all, from my own experience, how would I feel as a small business person?

And then, second, from the points discussed with me by small business people in Montana.

But I really think that all of us would agree that there are some abuses that should be corrected. But I doubt whether you can come in and, in a short period of time, arrange to go through even two or three of those and to correctly address them.

Senator CHAFEE. You mean here in the committee?

Senator MELCHER. Here in the committee without extended hearings by everybody that is involved, and they should be—should have that opportunity to put in their recommendations. I do not think it fits a time frame if we are going to bring this bill back and put it on the floor.

Senator CHAFEE. There is nothing mandatory to bring the bill back, you know. The resolution it came back here with made it an option, whether it should come back. It did not direct the committee it should come back. It should report no sooner than—no earlier than July 15. So, you know, there is nothing sacred about this year.

Senator MELCHER. No; that is true. But my suggestion is that since the bill, in my judgment, clarifies these two very significant points for small business people that are covered by the NLRB, and also because the statutory prohibition of extension of the NLRB's jurisdiction to small businesses, that the bill is meritorious and constructive for small business people.

I suggest to the committee that is important to bring the bill back and pass it.

Senator CHAFEE. Thank you, Mr. Chairman.

Senator RIEGLE. Thank you, Mr. Chairman.

I want to say that from my time in the Senate and the House, I do not recall a time where testimony has been more important than yours today in terms of thoughtfulness and the balance, the care with which you have taken in terms of talking about people and trying to think this through.

It is a great help to the Senate and a great help to the committee. I appreciate the effort, and I appreciate the insight that you bring us.

And it is too bad that after drawing this committee assignment out of a hat, and ultimately ending up elsewhere, that you cannot be here, because you would certainly be a great source of strength to the committee.

With respect to the earlier "access" discussion with Senator Chafee, it seems to me that if union organizers in Montana were to be in a small coffee area, or rest area in a business location, and were to, in some intimidating manner, try to browbeat or harass prospective employees that they would like to have support the union, the typical reaction of the people from Montana would be to not vote for a union.

Those tactics are so self-defeating that they become something of a red herring. And we can talk about that kind of a situation.

Any suggestion that that is the norm again distorts this whole discussion and takes us down a side road and away from the sensible evaluation of issues.

Senator MELCHER. Well, I think you are right, Senator. I think in the first place that there would be very few small businesses that would ever trigger access. There is a strong relationship between employer and employee in a small business, as I know, built on mutual respect. And for the employer to attempt in any way to sell the employees on something, talking with them in a systematic way, what might be meritorious for that employee, would be a line that employers that I know would not cross. So they would not trigger access.

But, in those instances where conceivably they did trigger access, I think that a union organizer, or a pair of them, that plank themselves down in the way, mind you, in a coffee area where you go to get a cup of coffee, and you do not necessarily want to be told what is good for you, that it would almost insure that employer, if he opposes the union, he need not worry any more because the employee would probably be the one to say to the union organizer, "Get out. I do not want you here. What are you here for?"

Our people have, I believe, kind of a nice attitude toward their fellow humans, and they are always willing to listen to somebody that wants to propose something. But when they—they do not want to be pushed around very much, and I think that is typical of Americans.

And the first thing they are going to ask is, "What do I get out of the $10 or $12 a month dues that I pay? What are you doing for me?" They are very skeptical of any approach that is awkward, inopportune, or inconvenient. It would be a sure failure on the part of the organizers.

Senator RIEGLE. Well, you know——

Senator MELCHER. These organizers are not somebody drawn out of Washington or Memphis or somewhere. They are people who live in Montana. They are Montanans.

Senator RIEGLE. Well, I would say that would be true of how people in Michigan and all States tend to react to the kind of hypothetical we talked about.

You know, it is interesting that we have a practical parallel ourselves in that we have to go out and solicit positive responses as candidates for election. We all know, perhaps better than anybody knows, what is required in terms of trying to reach somebody, especially somebody that is skeptical about what you are saying, or who does not want to take the time to stop in front of a shopping center to talk about why you are running for office.

You made two key points that I want to emphasize. First, I accept your point that small businesses are worse off under existing law and procedure, the whole mass of regulation that has accumulated, versus what the much cleaner procedure of the Byrd package would offer.

I think that is a central fact. Now, obviously, there has not been time for that to be disseminated broadly, plus there is so much misinformation and hysteria to try to cut through.

It is illustrated perfectly by the editorial that you read where the blanket statement is made that all the mom-and-pop stores in the country would be bankrupt if this new bill were to pass.

That is absolute nonsense. It is untrue. But it is going to take awhile for the kind of careful analysis that you have laid out for us today to go out and counteract that misinformation.

And along that line, let me just go one step further. With respect to the data provided earlier, when I pointed out that 78 percent of all U.S. businesses today are exempt under the current law and would continue to be exempt under the proposed law, the Senator from Utah who was here claimed in response that 78 percent were sole proprietorships and did not therefore have employees and therefore would, in a sense, render a different kind of meaning to the 78 percent of businesses that are and will be excluded.

This 78-percent figure that I cited for all business excluded small businesses in the country who are sole proprietorships or otherwise had no employees.

Of the remaining businesses where there are employees, only 22 percent would fall within the reach of this bill. Also, 58 percent of the members of the Senate have been voting in the last few votes to close the debate and to get on with this issue. It does not mean that all 58 of the 100 are prepared to vote for the bill, although it may be that even more are prepared to vote for the bill if we get to that point.

But, in normal terms, that kind of a percentage support—as I have seen it in elections—is a landslide, any time 58 percent express themselves one way.

I have heard it said with a good percentage much below that.

But one of the ironies of this whole debate is that the majority of Senate Members of both parties have judged that this is sound legislation for the country. But we cannot budge it because of the rule that allows a minority to tie up the process. And so we are left with an impression that there is a stalemate because there is a division of opinion.

Quite the contrary is the case. There is a very substantial majority sentiment across both parties to support this bill. But the majority is not getting a chance to exercise itself because of the way that they allow these filibusters in the Senate.

So your testimony, I think, is all the more important in light of that fact.

The CHAIRMAN. I agree completely. Thank you.

Senator HATCH. I think I might add otherwise, known as the Senate rules.

Senator MELCHER. I will defend the filibuster.

Senator HATCH. So will I. I think that is one way you can represent the majority of people in this country, maybe the only way sometimes.

But, Senator Melcher, I have appreciated your advocacy on the floor. We have had extensive colloquy. We have covered this before.

I think you have been an active advocate to try to get this bill to make some sense. I particularly appreciate two comments that you made today. And, No. 1, there is nothing sacred about having to come up again this year, that it will probably be better off to take some time and resolve some of the difficulties.

No. 2, we really should address some of the union abuses—that takes more time.

We have 11 appropriation bills——

The CHAIRMAN. We have got to go.

Senator HATCH. We have to dispose of these, it seems to me——

Senator MELCHER. Well, I do want to make it clear that I hope we can bring it up again and pass it this year.

The Chairman. Thank you, John.

[The following was subsequently received for the record:]

WENDELL H. FORD
KENTUCKY

United States Senate

WASHINGTON, D.C. 20510

COMMITTEES:
COMMERCE, SCIENCE AND TRANSPORTATION
ENERGY AND NATURAL RESOURCES

June 27, 1978

Dear Pete:

Thank you very much for the opportunity to comment on H.R. 8410. For clarification, my comments will be addressed to the Committee substitute.

1. One of the most serious problems is jurisdiction. Although the present jurisdiction standards exempt a very high percentage of business establishments, the threshold does not effectively shield small businesses. It would seem to me that the Committee should give serious consideration to adjusting the threshold levels to account for inflation that has occurred since the jurisdictional standard was established. Consider the $500,000 volume for retail businesses that was established in 1958, as an example. At that time, the threshold exempted a much larger number of businesses than it would at the present time. Other standards were established in the 60's and 70's. To maintain the level of exemption at the time that the standard was established, adjustments need to be made. It is important that this matter be addressed more effectively.

2. Under Section 6, a second petition may be filed after a two months' delay. This means that a petition can be pending during twelve out of any fourteen months. Campaign activity for this period would appear to be excessive. I urge the Committee to consider a six months' interim period for second notification rather than two months.

3. The elimination of the under ten employee establishments from the equal access provision has merit, but we also should recognize that it presents problems too. The group of business establishments with ten to twenty employees may feel that this provision permits an unfair competitive advantage for those firms with less than ten employees. If possible, an exemption should be based on a standard classification. If the SBA or other federal agencies have established categories, then they should be used rather than a new one. I urge the Committee to set the exemption at about fifty employee establishments if the number of employees is the criteria.

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4. So much misinformation has been circulated about the cost of adding two new members to the NLRB that I would strongly recommend that the additional Board members be eliminated. With the administrative judges and the rulemaking, it would appear to me that the additional Board members could be deleted without materially affecting the implementation of this legislation.

5. Consideration should be given to individuals who conscientiously object to membership in a labor union. The bill recognizes conscientious objectors who are members of religious organizations, but fails to address private attitudes and convictions when a person is not a member of such organization. This issue is very delicate, but individual rights are extremely important.

I commend you and other members of the Committee for the efforts you have made to enact a bill that is fair to both labor and management. Your action on the floor sought to accommodate each of us who had amendments and I know that that same spirit of cooperation will continue in your hearings before the Committee and the debate on the bill when it is reported back to the floor.

Sincerely,

Stendell

The Honorable Harrison A. Williams
Chairman, Committee on Human Resources
United States Senate
Washington, D.C. 20510

The CHAIRMAN. We will adjourn.

[Whereupon, at 12:20 p.m., the committee recessed, subject to the call of the Chair.]

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